

# **CHAPTER 5. PROBATE COURT**

## **MICHIGAN COURT RULES OF 1985**

### **Subchapter 5.000 General Provisions**

#### **Rule 5.001 Applicability**

(A) Applicability of Rules. Procedure in probate court is governed by the rules applicable to other civil proceedings, except as modified by the rules in this chapter.

(B) Terminology.

(1) References to the "clerk" in the Michigan Court Rules also apply to the register in probate court proceedings.

(2) References to "pleadings" in the Michigan Court Rules also apply to petitions, objections, and claims in probate court proceedings.

## Subchapter 5.100 General Rules of Pleading and Practice

### **Rule 5.101 Form and Commencement of Action**

(A) Form of Action. There are two forms of action, a "proceeding" and a "civil action."

(B) Commencement of Proceeding. A proceeding is commenced by filing an application or a petition with the court.

(C) Civil Actions, Commencement, Governing Rules. The following actions, must be titled civil actions, commenced by filing a complaint and governed by the rules which are applicable to civil actions in circuit court:

- (1) Any action against another filed by a fiduciary or trustee, and
- (2) Any action filed by a claimant after notice that the claim has been disallowed.

### **Rule 5.102 Notice of Hearing**

A petitioner, fiduciary, or other moving party must cause to be prepared, served, and filed, a notice of hearing for all matters requiring notification of interested persons. It must state the time and date, the place, and the nature of the hearing. Hearings must be noticed for and held at times previously approved by the court.

### **Rule 5.103 Who May Serve**

(A) Qualifications. Service may be made by any adult or emancipated minor, including an interested person.

(B) Service in a Governmental Institution. Personal service on a person in a governmental institution, hospital, or home must be made by the person in charge of the institution or a person designated by that person.

### **Rule 5.104 Proof of Service; Waiver and Consent; Unopposed Petition**

(A) Proof of Service.

(1) Whenever service is required by statute or court rule, a proof of service must be filed promptly and at the latest before a hearing to which the paper relates or at the time the paper is required to be filed with the court if the paper does not relate to a hearing. The proof of service must include a description of the papers served, the date of service, the manner and method of service, and the person or persons served.

(2) Except as otherwise provided by rule, proof of service of a paper required or permitted to be served may be by

- (a) a copy of the notice of hearing, if any;
- (b) copies of other papers served with the notice of hearing, with a description of the papers in the proof of service;

(c) authentication under MCR 5.114(B) of the person making service.

(3) Subrule (A)(1) notwithstanding, in decedent estates, no proof of service need be filed in connection with informal proceedings or unsupervised administration unless required by court rule.

(4) In unsupervised administration of a trust, subrule (A)(1) notwithstanding, no proof of service need be filed unless required by court rule.

(B) Waiver and Consent.

(1) Waiver. The right to notice of hearing may be waived. The waiver must

(a) be stated on the record at the hearing, or

(b) be in a writing, which is dated and signed by the interested person or someone authorized to consent on the interested person's behalf and specifies the hearing to which it applies.

(2) Consent. The relief requested in an application, petition, or motion may be granted by consent. An interested person who consents to an application, petition, or motion does not have to be served with or waive notice of hearing on the application, petition, or motion. The consent must

(a) be stated on the record at the hearing, or

(b) be in a writing which is dated and signed by the interested person or someone authorized to consent on the interested person's behalf and must contain a declaration that the person signing has received a copy of the application, petition, or motion.

(3) Who May Waive and Consent. A waiver and a consent may be made

(a) by a legally competent interested person;

(b) by a person designated in these rules as eligible to be served on behalf of an interested person who is a legally disabled person; or

(c) on behalf of an interested person whether competent or legally disabled, by an attorney who has previously filed a written appearance.

However, a guardian, conservator, or trustee cannot waive or consent with regard to petitions, motions, accounts, or reports made by that person as guardian, conservator, or trustee.

(4) Order. If all interested persons have consented, the order may be entered immediately.

(C) Unopposed Petition. If a petition is unopposed at the time set for the hearing, the court may either grant the petition on the basis of the recitations in the petition or conduct a hearing. However, an order determining heirs based on an uncontested petition to determine heirs may only be entered on the basis of sworn testimony or a sworn testimony form. An order granting a petition to appoint a guardian may only be entered on the basis of testimony at a hearing.

## **Rule 5.105 Manner and Method of Service**

### **(A) Manner of Service.**

- (1) Service on an interested person may be by personal service within or without the State of Michigan.
- (2) Unless another method of service is required by statute, court rule, or special order of a probate court, service may be made to the current address of an interested person by registered, certified, or ordinary first-class mail. Foreign consul and the Attorney General may be served by mail.
- (3) An interested person whose address or whereabouts is not known may be served by publication, if an affidavit or declaration under MCR 5.114(B) is filed with the court, showing that the address or whereabouts of the interested person could not be ascertained on diligent inquiry. Except in proceedings seeking a determination of a presumption of death based on absence pursuant to MCL 700.1208(2), after an interested person has once been served by publication, notice is only required on an interested person whose address is known or becomes known during the proceedings.
- (4) The court, for good cause on ex parte petition, may direct the manner of service if
  - (a) no statute or court rule provides for the manner of service on an interested person, or
  - (b) service cannot otherwise reasonably be made.

### **(B) Method of Service.**

#### **(1) Personal Service.**

- (a) On an Attorney. Personal service of a paper on an attorney must be made by
  - (i) handing it to the attorney personally;
  - (ii) leaving it at the attorney's office with a clerk or with some person in charge or, if no one is in charge or present, by leaving it in some conspicuous place there, or by electronically delivering a facsimile to the attorney's office;
  - (iii) if the office is closed or the attorney has no office, by leaving it at the attorney's usual residence with some person of suitable age and discretion residing there; or
  - (iv) sending the paper by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the attorney receives the paper.
- (b) On Other Individuals. Personal service of a paper on an individual other than an attorney must be made by
  - (i) handing it to the individual personally;

(ii) leaving it at the person's usual residence with some person of suitable age and discretion residing there; or

(iii) sending the paper by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the individual receives the paper.

(c) On Persons Other Than Individuals. Service on an interested person other than an individual must be made in the manner provided in MCR 2.105(C)-(G).

(2) Mailing. Mailing of a copy under this rule means enclosing it in a sealed envelope with first-class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. Service by mail is complete at the time of mailing.

(3) Publication. Service by publication must be made in the manner provided in MCR 5.106.

(C) Petitioner, Service Not Required. For service of notice of hearing on a petition, the petitioner, although otherwise an interested person, is presumed to have waived notice and consented to the petition, unless the petition expressly indicates that the petitioner does not waive notice and does not consent to the granting of the requested prayers without a hearing. Although a petitioner or a fiduciary may in fact be an interested person, the petitioner need not indicate, either by written waiver or proof of service, that the petitioner has received a copy of any paper required by these rules to be served on interested persons.

(D) Service on Persons Under Legal Disability or Otherwise Legally Represented. In a guardianship or conservatorship proceeding, a petition or notice of hearing asking for an order that affects the ward or protected individual must be served on that ward or protected individual. In all other matters, service on an interested person under legal disability or otherwise legally represented may be made instead on the following:

(1) The guardian of an adult, conservator, or guardian ad litem of a minor or other legally disabled person, except with respect to:

(a) a petition for commitment or

(b) a petition, account, inventory, or report made as the guardian, conservator, or guardian ad litem.

(2) The trustee of a trust with respect to a beneficiary of the trust, except that the trustee may not be served on behalf of the beneficiary on petitions, accounts, or reports made by the trustee as trustee or as personal representative of the settlor's estate.

(3) The guardian ad litem of any unascertained or unborn person.

(4) A parent of a minor with whom the minor resides, provided the interest of the parent in the outcome of the hearing is not in conflict with the interest of the minor and provided the parent has filed an appearance on behalf of the minor.

(5) The attorney for an interested person who has filed a written appearance in the proceeding. If the appearance is in the name of the office of the United States attorney, the counsel for the Veterans' Administration, the Attorney General, the prosecuting attorney, or the county or municipal corporation counsel, by a specifically designated attorney, service must be directed to the attention of the designated attorney at the address stated in the written appearance.

(6) The agent of an interested person under an unrevoked power of attorney filed with the court. A power of attorney is deemed unrevoked until written revocation is filed or it is revoked by operation of law.

For purposes of service, an emancipated minor without a guardian or conservator is not deemed to be under legal disability.

(E) Service on Beneficiaries of Future Interests. A notice that must be served on unborn or unascertained interested persons not represented by a fiduciary or guardian ad litem is considered served on the unborn or unascertained interested persons if it is served as provided in this subrule.

(1) If an interest is limited to persons in being and the same interest is further limited to the happening of a future event to unascertained or unborn persons, notice and papers must be served on the persons to whom the interest is first limited.

(2) If an interest is limited to persons whose existence as a class is conditioned on some future event, notice and papers must be served on the persons in being who would comprise the class if the required event had taken place immediately before the time when the papers are served.

(3) If a case is not covered by subrule (E)(1) or (2), notice and papers must be served on all known persons whose interests are substantially identical to those of the unascertained or unborn interested persons.

### **Rule 5.106 Publication of Notice of Hearing**

(A) Requirements. A notice of hearing or other notice required to be made by publication must be published in a newspaper as defined by MCR 2.106(F) one time at least 14 days before the date of the hearing, except that publication of a notice seeking a determination of a presumption of death based on absence pursuant to MCL 700.1208(2) must be made once a month for 4 consecutive months before the hearing.

(B) Contents of Published Notice. If notice is given to a person by publication because the person's address or whereabouts is not known and cannot be ascertained after diligent inquiry, the published notice must include the name of the person to whom the notice is given and a statement that the result of the hearing may be to bar or affect the person's interest in the matter.

(C) Affidavit of Publication. The person who orders the publication must cause to be filed with the court a copy of the publication notice and the publisher's affidavit stating

(1) the facts that establish the qualifications of the newspaper, and

- (2) the date or dates the notice was published.
- (D) Service of Notice. A copy of the notice:
- (1) must be mailed to an interested person at his or her last known address if the person's present address is not known and cannot be ascertained by diligent inquiry;
  - (2) need not be mailed to an interested person if an address cannot be ascertained by diligent inquiry.
- (E) Location of Publication. Publication must be in the county where the court is located unless a different county is specified by statute, court rule, or order of the court.

### **Rule 5.107 Other Papers Required to be Served**

(A) Other Papers to be Served. The person filing a petition, an application, a sworn testimony form, supplemental sworn testimony form, a motion, a response or objection, an instrument offered or admitted to probate, an accounting, or a sworn closing statement with the court must serve a copy of that document on interested persons. The person who obtains an order from the court must serve a copy of the order on interested persons.

(B) Exceptions.

- (1) Service of the papers listed in subrule (A) is not required to be made on an interested person whose address or whereabouts, on diligent inquiry, is unknown, or on an unascertained or unborn person. The court may excuse service on an interested person for good cause.
- (2) Service is not required for a small estate filed under MCL 700.3982.

### **Rule 5.108 Time of Service**

(A) Personal. Personal service of a petition or motion must be made at least 7 days before the date set for hearing, or an adjourned date, unless a different period is provided or permitted by court rule. This subrule applies regardless of conflicting statutory provisions.

(B) Mail. Service by mail of a petition or motion must be made at least 14 days before the date set for hearing, or an adjourned date.

(C) Exception: Foreign Consul. This rule does not affect the manner and time for service on foreign consul provided by law.

(D) Computation of Time. MCR 1.108 governs computation of time in probate proceedings.

(E) Responses. A written response or objection may be served at any time before the hearing or at a time set by the court.

### **Rule 5.112 Prior Proceedings Affecting the Person of a Minor**

Proceedings affecting the person of a minor subject to the prior continuing jurisdiction of another court of record are governed by MCR 3.205, including the

requirement that petitions in such proceedings must contain allegations with respect to the prior proceedings.

### **Rule 5.113 Papers; Form and Filing**

#### **(A) Forms of Papers Generally.**

- (1) An application, petition, motion, inventory, report, account, or other paper in a proceeding must
  - (a) be legibly typewritten or printed in ink in the English language, and
  - (b) include the
    - (i) name of the court and title of the proceeding in which it is filed;
    - (ii) case number, if any, including a prefix of the year filed and a two-letter suffix for the case-type code (see MCR 8.117) according to the principal subject matter of the proceeding, and if the case is filed under the juvenile code, the petition number which also includes a prefix of the year filed and a two-letter suffix for the case-type code.
    - (iii) character of the paper; and
    - (iv) name, address, and telephone number of the attorney, if any, appearing for the person filing the paper, and
  - (c) be substantially in the form approved by the State Court Administrator, if a form has been approved for the use.
- (2) A judge or register shall not receive and file a nonconforming paper.

#### **(B) Contents of Petitions.**

- (1) A petition must include allegations and representations sufficient to justify the relief sought and must:
  - (a) identify the petitioner, and the petitioner's interest in proceedings, and qualification to petition;
  - (b) include allegations as to residence, domicile, or property situs essential to establishing court jurisdiction;
  - (c) identify and incorporate, directly or by reference, any documents to be admitted, construed, or interpreted;
  - (d) include any additional allegations required by law or court rule;
  - (e) except when ex parte relief is sought, include a current list of interested persons, indicate the existence and form of incapacity of any of them, the mailing addresses of the persons or their representatives, the nature of representation and the need, if any, for special representation.
- (2) The petition may incorporate by reference papers and lists of interested persons previously filed with the court if changes in the papers or lists are set forth in the incorporating petition.



(C) Filing by Registered Mail. Any document required by law to be filed in or delivered to the court by registered mail, may be filed or delivered by certified mail, return receipt requested.

(D) Filing Additional Papers. The court in its discretion may receive for filing a paper not required to be filed.

#### **Rule 5.114 Signing and Authentication of Papers**

(A) Signing of Papers.

(1) The provisions of MCR 2.114 regarding the signing of papers apply in probate proceedings except as provided in this subrule.

(2) When a person is represented by an attorney, the signature of the attorney is required on any paper filed in a form approved by the State Court Administrator only if the form includes a place for a signature.

(3) An application, petition, or other paper may be signed by the attorney for the petitioner, except that an inventory, account, acceptance of appointment, and sworn closing statement must be signed by the fiduciary or trustee. A receipt for assets must be signed by the person entitled to the assets.

(B) Authentication by Verification or Declaration.

(1) An application, petition, inventory, accounting, proof of claim, or proof of service must be either authenticated by verification under oath by the person making it, or, in the alternative, contain a statement immediately above the date and signature of the maker: "I declare under the penalties of perjury that this \_\_\_\_\_ has been examined by me and that its contents are true to the best of my information, knowledge, and belief." Any requirement of law that a document filed with the court must be sworn may be met by this declaration.

(2) In addition to the sanctions provided by MCR 2.114(E), a person who knowingly makes a false declaration under subrule (B)(1) is in contempt of court.

#### **Rule 5.117 Appearance by Attorneys**

(A) Representation of Fiduciary. An attorney filing an appearance on behalf of a fiduciary shall represent the fiduciary.

(B) Appearance.

(1) In General. An attorney may appear by an act indicating that the attorney represents an interested person in the proceeding. An appearance by an attorney for an interested person is deemed an appearance by the interested person. Unless a particular rule indicates otherwise, any act required to be performed by an interested person may be performed by the attorney representing the interested person.

(2) Notice of Appearance. If an appearance is made in a manner not involving the filing of a paper served with the court or if the appearance is made by filing a paper which is not served on the interested persons, the attorney must promptly file a written appearance and serve it on the interested persons whose

addresses are known and on the fiduciary. The attorney's address and telephone number must be included in the appearance.

(3) Appearance by Law Firm.

(a) A pleading, appearance, motion, or other paper filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a paper in the action. All notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered. This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the client.

(b) The appearance of an attorney is deemed to be the appearance of every member of the law firm. Any attorney in the firm may be required by the court to conduct a court-ordered conference or trial.

(C) Duration of Appearance by Attorney.

(1) In General. Unless otherwise stated in the appearance or ordered by the court, an attorney's appearance applies only in the court in which it is made or to which the action is transferred and only for the proceeding in which it is filed.

(2) Appearance on Behalf of Fiduciary. An appearance on behalf of a fiduciary applies until the proceedings are completed, the client is discharged, or an order terminating the appearance is entered.

(3) Termination of Appearance on Behalf of a Personal Representative. In unsupervised administration, the probate register may enter an order terminating an appearance on behalf of a personal representative if the personal representative consents in writing to the termination.

(4) Other Appearance. An appearance on behalf of a client other than a fiduciary applies until a final order is entered disposing of all claims by or against the client, or an order terminating the appearance is entered.

(5) Substitution of Attorneys. In the case of a substitution of attorneys, the court in a supervised administration or the probate register in an unsupervised administration may enter an order permitting the substitution without prior notice to the interested persons or fiduciary. If the order is entered, the substituted attorney must give notice of the substitution to all interested persons and the fiduciary.

(D) Right to Determination of Compensation. An attorney whose services are terminated retains the right to have compensation determined before the proceeding is closed.

**Rule 5.118 Amending or Supplementing Papers**

(A) Papers Subject to Hearing. A person who has filed a paper that is subject to a hearing may amend or supplement the paper

(1) before a hearing if notice is given pursuant to these rules, or

(2) at the hearing without new notice of hearing if the court determines that material prejudice would not result to the substantial rights of the person to whom the notice should have been directed.

(B) Papers Not Subject to Hearing. A person who has filed a paper that is not subject to a hearing may amend or supplement the paper if service is made pursuant to these rules.

#### **Rule 5.119 Additional Petitions; Objections; Hearing Practices**

(A) Right to Hearing, New Matter. An interested person may, within the period allowed by law or these rules, file a petition and obtain a hearing with respect to the petition. The petitioner must serve copies of the petition and notice of hearing on the fiduciary and other interested persons whose addresses are known.

(B) Objection to Pending Matter. An interested person may object to a pending petition orally at the hearing or by filing and serving a paper which conforms with MCR 5.113. The court may adjourn a hearing based on an oral objection and require that a proper written objection be filed and served.

(C) Adjournment. A petition that is not heard on the day for which it is noticed, in the absence of a special order, stands adjourned from day to day or until a day certain.

(D) Briefs; Argument. The court may require that briefs of law and fact and proposed orders be filed as a condition precedent to oral argument. The court may limit oral argument.

#### **Rule 5.120 Action by Fiduciary in Contested Matter; Notice to Interested Persons; Failure to Intervene**

The fiduciary represents the interested persons in a contested matter. The fiduciary must give notice to all interested persons whose addresses are known that a contested matter has been commenced and must keep such interested persons reasonably informed of the fiduciary's actions concerning the matter. The fiduciary must inform the interested persons that they may file a petition to intervene in the matter and that failure to intervene shall result in their being bound by the actions of the fiduciary. The interested person shall be bound by the actions of the fiduciary after such notice and until the interested person notifies the fiduciary that the interested person has filed with the court a petition to intervene.

#### **Rule 5.121 Guardian Ad Litem; Visitor**

(A) Appointment.

(1) Guardian Ad Litem. The court shall appoint a guardian ad litem when required by law. If it deems necessary, the court may appoint a guardian ad litem to appear for and represent the interests of any person in any proceeding. The court shall state the purpose of the appointment in the order of appointment. The order may be entered with or without notice.

(2) Visitor. The court may appoint a visitor when authorized by law.

(B) Revocation. If it deems necessary, the court may revoke the appointment and appoint another guardian ad litem or visitor.

(C) Duties. Before the date set for hearing, the guardian ad litem or visitor shall conduct an investigation and shall make a report in open court or file a written report of the investigation and recommendations. The guardian ad litem or visitor need not appear personally at the hearing unless required by law or directed by the court. Any written report must be filed with the court at least 24 hours before the hearing or such other time specified by the court.

(D) Evidence.

(1) Reports, Admission Into Evidence. Oral and written reports of a guardian ad litem or visitor may be received by the court and may be relied on to the extent of their probative value, even though such evidence may not be admissible under the Michigan Rules of Evidence.

(2) Reports, Review and Cross-Examination.

(a) Any interested person shall be afforded an opportunity to examine and controvert reports received into evidence.

(b) The person who is the subject of a report received under subrule (D)(1) shall be permitted to cross-examine the individual making the report if the person requests such an opportunity.

(c) Other interested persons may cross-examine the individual making a report on the contents of the report, if the individual is reasonably available. The court may limit cross-examination for good cause.

(E) Attorney-Client Privilege.

(1) During Appointment of Guardian Ad Litem. When the guardian ad litem appointed to represent the interest of a person is an attorney, that appointment does not create an attorney-client relationship. Communications between that person and the guardian ad litem are not subject to the attorney-client privilege. The guardian ad litem must inform the person whose interests are represented of this lack of privilege as soon as practicable after appointment. The guardian ad litem may report or testify about any communication with the person whose interests are represented.

(2) Later Appointment as Attorney. If the appointment of the guardian ad litem is terminated and the same individual is appointed attorney, the appointment as attorney creates an attorney-client relationship. The attorney-client privilege relates back to the date of the appointment of the guardian ad litem.

### **Rule 5.125 Interested Persons Defined**

(A) Special Persons. In addition to persons named in subrule (C) with respect to specific proceedings, the following persons must be served:

(1) The Attorney General must be served if required by law or court rule. The Attorney General must be served in the specific proceedings enumerated in subrule (C) when the decedent is not survived by any known heirs, or the protected person has no known presumptive heirs.

(2) A foreign consul must be served if required by MCL 700.1401(4) or court rule. An attorney who has filed an appearance for a foreign consul must be served when required by subrule (A)(5).

(3) On a petition for the appointment of a guardian or conservator of a person on whose account benefits are payable by the Veterans' Administration, the Administrator of Veterans' Affairs must be served through the administrator's Michigan district counsel.

(4) A guardian, conservator, or guardian ad litem of a person must be served with notice of proceedings as to which the represented person is an interested person, except as provided by MCR 5.105(D)(1).

(5) An attorney who has filed an appearance must be served notice of proceedings concerning which the attorney's client is an interested person.

(6) A special fiduciary appointed under MCL 700.1309.

(7) A person who filed a demand for notice under MCL 700.3205 or a request for notice under MCL 700.5104 if the demand or request has not been withdrawn, expired, or terminated by court order.

(B) Special Conditions for Interested Persons.

(1) Claimant. Only a claimant who files a claim with the court, with a personal representative, or with a trustee of a trust required to give notice to creditors pursuant to MCL 700.7504, and whose claim remains undetermined or unpaid need be notified of specific proceedings under subrule (C).

(2) Devisee. Only a devisee whose devise remains unsatisfied need be notified of specific proceedings under subrule (C).

(3) Trust as Devisee. If either a trust or a trustee is a devisee, the trustee is the interested person. If no trustee has qualified, the interested persons are the current trust beneficiaries and the nominated trustee, if any.

(4) Father of a Child Born out of Wedlock. Except as otherwise provided by law, the natural father of a child born out of wedlock need not be served notice of proceedings in which the child's parents are interested persons unless his paternity has been determined in a manner provided by law.

(C) Specific Proceedings. Subject to subrules (A) and (B) and MCR 5.105(E), the following provisions apply. When a single petition requests multiple forms of relief, the petitioner must give notice to all persons interested in each type of relief:

(1) The persons interested in an application or a petition to probate a will are the

(a) devisees,

(b) nominated trustee and current trust beneficiaries of a trust under the will,

(c) heirs,

(d) nominated personal representative, and

- (e) trustee of a revocable trust described in MCL 700.7501(1).
- (2) The persons interested in an application or a petition to appoint a personal representative, other than a special personal representative, of an intestate estate are the
  - (a) heirs,
  - (b) nominated personal representative, and
  - (c) trustee of a revocable trust described in MCL 700.7501(1).
- (3) The persons interested in a petition to determine the heirs of a decedent are the heirs.
- (4) The persons interested in a petition of surety for discharge from further liability are the
  - (a) principal on the bond,
  - (b) co-surety,
  - (c) devisees of a testate estate,
  - (d) heirs of an intestate estate,
  - (e) protected person and presumptive heirs of the protected person in a conservatorship, and
  - (f) claimants.
- (5) The persons interested in a proceeding for spouse's allowance are the
  - (a) devisees of a testate estate,
  - (b) heirs of an intestate estate,
  - (c) claimants,
  - (d) spouse, and
  - (e) the personal representative, if the spouse is not the personal representative.
- (6) The persons interested in a proceeding for examination of an account of a fiduciary are the
  - (a) devisees of a testate estate, and if one of the devisees is a trustee or a trust, the persons referred to in MCR 5.125(B)(3),
  - (b) heirs of an intestate estate,
  - (c) protected person and presumptive heirs of the protected person in a conservatorship,
  - (d) claimants,
  - (e) current trust beneficiaries in a trust accounting, and
  - (f) such other persons whose interests would be adversely affected by the relief requested, including insurers and sureties who might be subject to financial obligations as the result of the approval of the account.

(7) The persons interested in a proceeding for partial distribution of the estate of a decedent are the

- (a) devisees of a testate estate entitled to share in the residue,
- (b) heirs of an intestate estate,
- (c) claimants, and
- (d) any other person whose unsatisfied interests in the estate may be affected by such assignment.

(8) The persons interested in a petition for an order of complete estate settlement under MCL 700.3952 or a petition for discharge under MCR 5.311(B)(3) are the

- (a) devisees of a testate estate,
- (b) heirs unless there has been an adjudication that decedent died testate,
- (c) claimants, and
- (d) such other persons whose interests are affected by the relief requested.

(9) The persons interested in a proceeding for an estate settlement order pursuant to MCL 700.3953 are the

- (a) personal representative,
- (b) devisees,
- (c) claimants, and
- (d) such other persons whose interests are affected by the relief requested.

(10) The persons interested in a proceeding for assignment and distribution of the share of an absent apparent heir or devisee in the estate of a decedent are the

- (a) devisees of the will of the decedent,
- (b) heirs of the decedent if the decedent did not leave a will,
- (c) devisees of the will of the absent person, and
- (d) presumptive heirs of the absent person.

(11) The persons interested in a petition for supervised administration after an estate has been commenced are the

- (a) devisees, unless the court has previously found decedent died intestate,
- (b) heirs, unless the court has previously found decedent died testate,
- (c) personal representative, and
- (d) claimants.

(12) The persons interested in an independent request for adjudication under MCL 700.3415 and a petition for an interim order under MCL 700.3505 are the

- (a) personal representative, and

- (b) other persons who will be affected by the adjudication.
- (13) The persons interested in a petition for settlement of a wrongful-death action or distribution of wrongful-death proceeds are the
- (a) heirs of the decedent,
  - (b) other persons who may be entitled to distribution of wrongful-death proceeds, and
  - (c) claimants whose interests are affected.
- (14) The persons interested in a will contest settlement proceeding are the
- (a) heirs of the decedent and
  - (b) devisees affected by settlement.
- (15) The persons interested in a partition proceeding where the property has not been assigned to a trust under the will are the
- (a) heirs in an intestate estate or
  - (b) devisees affected by partition.
- (16) The persons interested in a partition proceeding where the property has been assigned to a trust under the will are the
- (a) trustee and
  - (b) beneficiaries affected by the partition.
- (17) The persons interested in a petition to establish the cause and date of death in an accident or disaster case under MCL 700.1208 are the heirs of the presumed decedent.
- (18) The persons interested in a proceeding under the Mental Health Code that may result in an individual receiving involuntary mental health treatment or judicial admission of an individual with a developmental disability to a center are the
- (a) individual,
  - (b) individual's attorney,
  - (c) petitioner,
  - (d) prosecuting attorney or petitioner's attorney,
  - (e) director of any hospital or center to which the individual has been admitted,
  - (f) the individual's spouse, if the spouse's whereabouts are known,
  - (g) the individual's guardian, if any,
  - (h) in a proceeding for judicial admission to a center, the community mental health program, and
  - (i) such other relatives or persons as the court may determine.



(19) The persons interested in a petition for appointment of a guardian for a minor are

- (a) the minor, if 14 years of age or older;
- (b) if known by the petitioner, each person who had the principal care and custody of the minor during the 63 days preceding the filing of the petition;
- (c) the parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor, and
- (d) the nominated guardian.

(20) The persons interested in the acceptance of parental appointment of the guardian of a minor under MCL 700.5202 are

- (a) the minor, if 14 years of age or older,
- (b) the person having the minor's care, and
- (c) each grandparent and the adult presumptive heirs of the minor.

(21) The persons interested in a 7-day notice of acceptance of appointment as guardian of an incapacitated individual under MCL 700.5301 are the

- (a) incapacitated individual,
- (b) person having the care of the incapacitated individual, and
- (c) presumptive heirs of the incapacitated individual.

(22) The persons interested in a petition for appointment of a guardian of an alleged incapacitated individual are

- (a) the alleged incapacitated individual,
- (b) if known, a person named as attorney in fact under a durable power of attorney,
- (c) the alleged incapacitated individual's spouse,
- (d) the alleged incapacitated individual's adult children and the individual's parents,
- (e) if no spouse, child, or parent is living, the presumptive heirs of the individual,
- (f) the person who has the care and custody of the alleged incapacitated individual, and
- (g) the nominated guardian.

(23) The persons interested in receiving a copy of the report of a guardian of a legally incapacitated individual on the condition of a ward are:

- (a) the ward,
- (b) the person who has principal care and custody of the ward, and
- (c) the spouse and adult children or, if no adult children are living, the presumptive heirs of the individual.

(24) The persons interested in a petition for the appointment of a conservator or for a protective order are

- (a) the individual to be protected if 14 years of age or older,
- (b) the presumptive heirs of the individual to be protected,
- (c) if known, a person named as attorney in fact under a durable power of attorney,
- (d) the nominated conservator, and
- (e) a governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending.

(25) The persons interested in a petition for the modification or termination of a guardianship or conservatorship or for the removal of a guardian or a conservator are

- (a) those interested in a petition for appointment under subrule (C)(19), (21), (22), or (23) as the case may be, and
- (b) the guardian or conservator.

(26) The persons interested in a petition by a conservator for instructions or approval of sale of real estate or other asset are

- (a) the protected individual and
- (b) those persons listed in subrule (C)(23) who will be affected by the instructions or order.

(27) The persons interested in receiving a copy of an inventory or account of a conservator or of a guardian are:

- (a) the protected individual or ward, if 14 years of age or older and can be located,
- (b) the presumptive heirs of the protected individual or ward and
- (c) claimants.

(28) The persons interested in a petition for approval of a trust under MCR 2.420 are

- (a) the protected individual if 14 years of age or older,
- (b) the presumptive heirs of the protected individual,
- (c) if there is no conservator, a person named as attorney in fact under a durable power of attorney,
- (d) the nominated trustee, and
- (e) a governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending.

(29) The persons interested in a petition for emancipation of a minor are

- (a) the minor,

- (b) parents of the minor,
- (c) the affiant on an affidavit supporting emancipation, and
- (d) any guardian or conservator.

(30) Interested persons for any proceeding concerning a durable power of attorney for health care are

- (a) the patient,
- (b) the patient's advocate,
- (c) the patient's spouse,
- (d) the patient's adult children,
- (e) the patient's parents if the patient has no adult children,
- (f) if the patient has no spouse, adult children, or parents, the patient's minor children, or, if there are none, the presumptive heirs whose addresses are known,
- (g) the patient's guardian and conservator, if any, and
- (h) the patient's guardian ad litem.

(31) Persons interested in a proceeding to require, hear, or settle an accounting of an agent under a power of attorney are

- (a) the principal,
- (b) the attorney in fact or agent,
- (c) any fiduciary of the principal,
- (d) the principal's guardian ad litem or attorney, if any, and
- (e) the principal's presumptive heirs.

(D) The court shall make a specific determination of the interested persons if they are not defined by statute or court rule.

(E) In the interest of justice, the court may require additional persons be served.

#### **Rule 5.126 Demand or Request for Notice**

(A) Applicability. For purposes of this rule "demand" means a demand or request. This rule governs the procedures to be followed regarding a person who files a demand for notice pursuant to MCL 700.3205 or MCL 700.5104. This person under both sections is referred to as a "demandant."

(B) Procedure.

(1) **Obligation to Provide Notice or Copies of Documents.** Except in small estates under MCL 700.3982 and MCL 700.3983, the person responsible for serving a paper in a decedent estate, guardianship, or conservatorship in which a demand for notice is filed is responsible for providing copies of any orders and filings pertaining to the proceeding in which the demandant has requested notification. If no proceeding is pending at the time the demand is filed, the court must

notify the petitioner or applicant at the time of filing that a demand for notice has been filed and of the responsibility to provide notice to the demandant.

(2) Rights and Obligations of Demandant.

(a) The demandant must serve on interested persons a copy of a demand for notice filed after a proceeding has been commenced.

(b) Unless the demand for notice is limited to a specified class of papers, the demandant is entitled to receive copies of all orders and filings subsequent to the filing of the demand. The copies must be mailed to the address specified in the demand. If the address becomes invalid and the demandant does not provide a new address, no further copies of papers need be provided to the demandant.

(C) Termination, Withdrawal.

(1) Termination on Disqualification of Demandant. The fiduciary or an interested person may petition the court to determine that a person who filed a demand for notice does not meet the requirements of statute or court rule to receive notification. The court on its own motion may require the demandant to show cause why the demand should not be stricken.

(2) Expiration of Demand When no Proceeding is Opened. If a proceeding is not opened, the demand expires three years from the date the demand is filed.

(3) Withdrawal. The demandant may withdraw the demand at any time by communicating the withdrawal in writing to the fiduciary.

**Rule 5.127 Venue of Certain Actions**

(A) Defendant Found Incompetent to Stand Trial. When a criminal defendant is found mentally incompetent to stand trial and is referred to the probate court for admission to a treating facility,

(1) if the defendant is a Michigan resident, venue is proper in the county where the defendant resides;

(2) if the defendant is not a Michigan resident, venue is proper in the county of the referring criminal court.

(B) Guardian of Property of Nonresident With a Developmental Disability. If an individual with a developmental disability is a nonresident of Michigan and needs a guardian for Michigan property under the Mental Health Code, venue is proper in the probate court of the county where any of the property is located.

(C) Guardian of Individual With a Developmental Disability Who is in a Facility. If venue for a proceeding to appoint a guardian for an individual with a developmental disability who is in a facility is questioned, and it appears that the convenience of the individual with a developmental disability or guardian would not be served by proceeding in the county where the individual with a developmental disability was found, venue is proper in the county where the individual with a developmental disability most likely would reside if not disabled. In making its decision, the court shall consider the situs of the property of the individual with a developmental disability and the residence of relatives or others who have provided care.

### **Rule 5.128 Change of Venue**

(A) Reasons for Change. On petition by an interested person or on the court's own initiative, the venue of a proceeding may be changed to another county by court order for the convenience of the parties and witnesses, for convenience of the attorneys, or if an impartial trial cannot be had in the county where the action is pending.

(B) Procedure. If venue is changed

(1) the court must send to the transferee court, without charge, copies of necessary documents on file as requested by the parties or the transferee court and the original of an unadmitted will or a certified copy of an admitted will; and

(2) except as provided in MCR 5.306(A) or unless the court directs otherwise, notices required to be published must be published in the county to which venue was changed.

### **Rule 5.131 Discovery Generally**

(A) The general discovery rules apply in probate proceedings.

(B) Scope of Discovery in Probate Proceedings. Discovery in a probate proceeding is limited to matters raised in any petitions or objections pending before the court. Discovery for civil actions in probate court is governed by subchapter 2.300.

### **Rule 5.132 Proof of Wills**

(A) Deposition of Witness to Will. If no written objection has been filed to the admission to probate of a document purporting to be the will of a decedent, the deposition of a witness to the will or of other witnesses competent to testify at a proceeding for the probate of the will may be taken and filed without notice. However, the deposition is not admissible in evidence if at the hearing on the petition for probate of the will an interested person who was not given notice of the taking of the deposition as provided by MCR 2.306(B) objects to its use.

(B) Use of Copy of Will. When proof of a will is required and a deposition is to be taken, a copy of the original will or other document made by photographic or similar process may be used at the deposition.

### **Rule 5.141 Pretrial Procedures; Conferences; Scheduling Orders**

The procedures of MCR 2.401 shall apply in a contested proceeding.

### **Rule 5.142 Pretrial Motions in Contested Proceedings**

In a contested proceeding, pretrial motions are governed by the rules that are applicable in civil actions in circuit court.

### **Rule 5.143 Alternative Dispute Resolution**

(A) The court may submit to mediation, case evaluation, or other alternative dispute resolution process one or more requests for relief in any contested proceeding. MCR 2.410 applies to the extent possible.

(B) If a dispute is submitted to case evaluation, MCR 2.403 and 2.404 shall apply to the extent feasible, except that sanctions must not be awarded unless the subject matter of the case evaluation involves money damages or division of property.

#### **Rule 5.144 Administratively Closed File**

(A) Administrative Closing. The court may administratively close a file

(1) for failure to file a notice of continuing administration as provided by MCL 700.3951(3) or

(2) for other reasons as provided by MCR 5.203(D) or, after notice and hearing, upon a finding of good cause.

In a conservatorship, the court may administratively close a file only when there are insufficient assets in the estate to employ a successor or special fiduciary, or after notice and hearing upon a finding of good cause. If the court administratively closes the conservatorship, the court shall provide notice to the state court administrative office of the closure.

(B) Reopening Administratively Closed Estate. Upon petition by an interested person, with or without notice as the court directs, the court may order an administratively closed estate reopened. The court may appoint the previously appointed fiduciary, a successor fiduciary, a special fiduciary, or a special personal representative, or the court may order completion of the administration without appointing a fiduciary. In a decedent estate, the court may order supervised administration if it finds that supervised administration is necessary under the circumstances.

#### **Rule 5.151 Jury Trial, Applicable Rules**

Jury trials in probate proceedings shall be governed by MCR 2.508 through 2.516 except as modified by this subchapter or MCR 5.740 for mental health proceedings.

#### **Rule 5.158 Jury Trial of Right in Contested Proceedings**

(A) Demand. A party may demand a trial by jury of an issue for which there is a right to trial by jury by filing in a manner provided by these rules a written demand for a jury trial within 28 days after an issue is contested. However, if trial is conducted within 28 days of the issue being joined, the jury demand must be filed at least 4 days before trial. A party who was not served with notice of the hearing at least 7 days before the hearing or trial may demand a jury trial at any time before the time set for the hearing. The court may adjourn the hearing in order to impanel the jury. A party may include the demand in a pleading if notice of the demand is included in the caption of the pleading. The jury fee provided by law must be paid at the time the demand is filed.

(B) Waiver. A party who fails to file a demand or pay the jury fee as required by this rule waives trial by jury. A jury is waived if trial or hearing is commenced without a demand being filed.

### **Rule 5.162 Form and Signing of Judgments and Orders**

(A) Form of Judgments and Orders. A proposed judgment or order must include the name, address, and telephone number of the attorney or party who prepared it. All judgments and orders of the court must be typewritten or legibly printed in ink and signed by the judge to whom the proceeding is assigned.

(B) Procedure for Entry of Judgments and Orders. In a contested matter, the procedure for entry of judgments and orders is as provided in MCR 2.602(B).

## Subchapter 5.200 Provisions Common to Multiple Types of Fiduciaries

### **Rule 5.201 Applicability**

Rules in this subchapter contain requirements applicable to all fiduciaries except trustees and apply to all estates except trusts.

### **Rule 5.202 Letters of Authority**

(A) Issuance. Letters of authority shall be issued after the appointment and qualification of the fiduciary. Unless ordered by the court, letters of authority will not have an expiration date.

(B) Restrictions and Limitations. The court may restrict or limit the powers of a fiduciary. The restrictions and limitations imposed must appear on the letters of authority. The court may modify or remove the restrictions and limitations with or without a hearing.

(C) Certification. A certification of the letters of authority and a statement that on a given date the letters are in full force and effect may appear on the face of copies furnished to the fiduciary or interested persons.

### **Rule 5.203 Follow-Up Procedures**

Except in the instance of a personal representative who fails to timely comply with the requirements of MCL 700.3951(1), if it appears to the court that the fiduciary is not properly administering the estate, the court shall proceed as follows:

(A) Notice of Deficiency. The court must notify the fiduciary, the attorney for the fiduciary, if any, and each of the sureties for the fiduciary of the nature of the deficiency, together with a notice to correct the deficiency within 28 days, or, in the alternative, to appear before the court or an officer designated by it at a time specified within 28 days for a conference concerning the deficiency. Service is complete on mailing to the last known address of the fiduciary.

(B) Conference, Memorandum. If a conference is held, the court must prepare a written memorandum setting forth the date of the conference, the persons present, and any steps required to be taken to correct the deficiency. The steps must be taken within the time set by the court but not to exceed 28 days from the date of the conference. A copy of the memorandum must be given to those present at the conference and, if the fiduciary is not present at the conference, mailed to the fiduciary at the last known address.

(C) Extension of Time. For good cause, the court may extend the time for performance of required duties for a further reasonable period or periods, but any extended period may not exceed 28 days and shall only be extended to a day certain. The total period as extended may not exceed 56 days.

(D) Suspension of Fiduciary, Appointment of Special Fiduciary. If the fiduciary fails to perform the duties required within the time allowed, the court may do



any of the following: suspend the powers of the dilatory fiduciary, appoint a special fiduciary, and close the estate administration. If the court suspends the powers of the dilatory fiduciary or closes the estate administration, the court must notify the dilatory fiduciary, the attorney of record for the dilatory fiduciary, the sureties on any bond of the dilatory fiduciary that has been filed, any financial institution listed on the most recent inventory or account where the fiduciary has deposited funds, any currently serving guardian ad litem, and the interested persons at their addresses shown in the court file. This rule does not preclude contempt proceedings as provided by law.

(E) Reports on the Status of Estates. The chief judge of each probate court must file with the state court administrator, on forms provided by the state court administrative office, any reports on the status of estates required by the state court administrator.

#### **Rule 5.204 Appointment of Special Fiduciary**

(A) Appointment. The court may appoint a special fiduciary or enjoin a person subject to the court's jurisdiction under MCL 700.1309 on its own initiative, on the notice it directs, or without notice in its discretion.

(B) Duties and Powers. The special fiduciary has all the duties and powers specified in the order of the court appointing the special fiduciary. Appointment of a special fiduciary suspends the powers of the general fiduciary unless the order of appointment provides otherwise. The appointment may be for a specified time and the special fiduciary is an interested person for all purposes in the proceeding until the appointment terminates.

#### **Rule 5.205 Address of Fiduciary**

A fiduciary must keep the court and the interested persons informed in writing within 7 days of any change in the fiduciary's address. Any notice sent to the fiduciary by the court by ordinary mail to the last address on file shall be notice to the fiduciary.

#### **Rule 5.206 Duty to Complete Administration**

A fiduciary and an attorney for a fiduciary must take all actions reasonably necessary to regularly close administration of an estate. If the fiduciary or the attorney fails to take such actions, the court may act to regularly close the estate and assess costs against the fiduciary or attorney personally.

#### **Rule 5.207 Sale of Real Estate**

(A) Petition. Any petition to approve the sale of real estate must contain the following:

- (1) the terms and purpose of the sale,
- (2) the legal description of the property,
- (3) the financial condition of the estate before the sale, and

(4) an appended copy of the most recent assessor statement or tax statement showing the state equalized value of the property. If the court is not satisfied that the evidence provides the fair market value, a written appraisal may be ordered.

(B) Bond. The court may require a bond before approving a sale of real estate in an amount sufficient to protect the estate.

## Subchapter 5.300 Proceedings In Decedent Estates

### **Rule 5.301 Applicability**

The rules in this subchapter apply to decedent estate proceedings other than proceedings provided by law for small estates under MCL 700.3982.

### **Rule 5.302 Commencement of Decedent Estates**

(A) Methods of Commencement. A decedent estate may be commenced by filing an application for an informal proceeding or a petition for a formal testacy proceeding. A request for supervised administration may be made in a petition for a formal testacy proceeding. When filing either an application or petition to commence a decedent estate, a copy of the death certificate must be attached. If the death certificate is not available, the petitioner may provide alternative documentation of the decedent's death. Requiring additional documentation, such as information about the proposed or appointed personal representative, is prohibited.

(B) Sworn Testimony Form. A sworn testimony form sufficient to establish the identity of interested persons must be submitted with the application or petition that commences proceedings. The form must be executed before a person authorized to administer oaths.

(C) Preservation of Testimony. If a hearing is held, proofs included as part of the record are deemed preserved for further administration purposes.

(D) Petition by Parent of Minor. In the interest of justice, the court may allow a custodial parent who has filed an appearance to file a petition to commence proceedings in a decedent estate on behalf of a minor child where the child is an interested person in the estate.

### **Rule 5.304 Notice of Appointment**

(A) Notice of Appointment. The personal representative must, not later than 14 days after appointment, serve notice of appointment as provided in MCL 700.3705 and the agreement and notice relating to attorney fees required by MCR 5.313(D). No notice of appointment need be served if the person serving as personal representative is the only person to whom notice must be given.

(B) Publication of Notice. If the address or identity of a person who is to receive notice of appointment is not known and cannot be ascertained with reasonable diligence, the notice of appointment must be published one time in a newspaper, as defined in MCR 2.106(F), in the county in which a resident decedent was domiciled or in the county in which the proceedings with respect to a nonresident were initiated. The published notice of appointment is sufficient if it includes:

- (1) statements that estate proceedings have been commenced, giving the name and address of the court, and, if applicable, that a will has been admitted to probate,
- (2) the name of any interested person whose name is known but whose address cannot be ascertained after diligent inquiry, and a statement that the result of

the administration may be to bar or affect that person's interest in the estate, and

(3) the name and address of the person appointed personal representative, and the name and address of the court.

(C) Prior Publication. After an interested person has once been served by publication, notice of appointment is only required if that person's address is known or becomes known during the proceedings.

### **Rule 5.305 Notice to Spouse; Election**

(A) Notice to Spouse. In the estate of a decedent who was domiciled in the state of Michigan at the time of death, the personal representative, except a special personal representative, must serve notice of the rights of election under part 2 of article II of the Estates and Protected Individuals Code, including the time for making the election and the rights to exempt property and allowances under part 4 of article II of the code, on the surviving spouse of the decedent within 28 days after the personal representative's appointment. An election as provided in subrule (C) may be filed in lieu of the notice. No notice need be given if the surviving spouse is the personal representative or one of several personal representatives or if there is a waiver under MCL 700.2205.

(B) Proof of Service. The personal representative is not required to file a proof of service of the notice of the rights of election.

(C) Spouse's Election. If the surviving spouse exercises the right of election, the spouse must serve a copy of the election on the personal representative personally or by mail. The election must be made within 63 days after the date for presentment of claims or within 63 days after the service of the inventory upon the surviving spouse, whichever is later. The election may be filed with the court.

(D) Assignment of Dower. A petition for the assignment of dower under MCL 558.1-558.29 must include:

(1) a full and accurate description of the land in Michigan owned by a deceased husband and of which he died seized, from which the petitioner asks to have the dower assigned;

(2) the name, age, and address of the widow and the names and addresses of the other heirs;

(3) the date on which the husband died and his domicile on the date of his death; and

(4) the fact that the widow's right to dower has not been barred and that she or some other person interested in the land wishes it set apart.

If there is a minor or other person other than the widow under legal disability having no legal guardian or conservator, there may not be a hearing on the petition until after the appointment of a guardian ad litem for such person.

## **Rule 5.306 Notice to Creditors, Presentment of Claims**

(A) Publication of Notice to Creditors; Contents. Unless the notice has already been given, the personal representative must publish, and a special personal representative may publish, in a newspaper, as defined by MCR 2.106(F), in a county in which a resident decedent was domiciled or in which the proceeding as to a nonresident was initiated, a notice to creditors as provided in MCL 700.3801. The notice must include:

- (1) The name, and, if known, last known address, date of death, and date of birth of the decedent;
- (2) The name and address of the personal representative;
- (3) The name and address of the court where proceedings are filed; and
- (4) A statement that claims will be forever barred unless presented to the personal representative, or to both the court and the personal representative within 4 months after the publication of the notice.

(B) Notice to Known Creditors and Trustee.

A personal representative who has published notice must cause a copy of the published notice or a similar notice to be served personally or by mail on each known creditor of the estate and to the trustee of a trust of which the decedent is settlor, as defined in MCL 700.7501(1). Notice need not be served on the trustee if the personal representative is the trustee.

(1) Within the time limits prescribed by law, the personal representative must cause a copy of the published notice or a similar notice to be served personally or by mail on each creditor of the estate whose identity at the time of publication or during the 4 months following publication is known to, or can be reasonably ascertained by, the personal representative.

(2) If, at the time of publication, the address of a creditor is unknown and cannot be ascertained after diligent inquiry, the name of the creditor must be included in the published notice.

(C) No Notice to Creditors. No notice need be given to creditors in the following situations:

- (1) The estate has no assets;
- (2) The estate qualifies and is administered under MCL 700.3982, MCL 700.3983, or MCL 700.3987;
- (3) The decedent has been dead for more than 3 years;
- (4) Notice has previously been given under MCL 700.7504 in the county where the decedent was domiciled in Michigan.

Notice need not be given to a creditor whose claim has been presented or paid.

(D) Presentment of Claims. A claim may be presented to the personal representative by mailing or delivering the claim to the personal representative's attorney. A claim is presented

- (1) on mailing, if addressed to the personal representative, the personal representative's attorney, or the court, or
- (2) in all other cases, when received by the personal representative or the court.

For purposes of this subrule, personal representative includes a proposed personal representative.

### **Rule 5.307 Requirements Applicable to All Decedent Estates**

(A) Inventory Fee. Within 91 days of the date of the letters of authority, the personal representative must submit to the court the information necessary for computation of the probate inventory fee. The inventory fee must be paid no later than the filing of the petition for an order of complete estate settlement under MCL 700.3952, the petition for settlement order under MCL 700.3953, or the sworn statement under MCL 700.3954, or one year after appointment, whichever is earlier.

(B) Notice to Personal Representative. At the time of appointment, the court must provide the personal representative with written notice of information to be provided to the court. The notice should be substantially in the following form or in the form specified by MCR 5.310(E), if applicable:

"Inventory Information: Within 91 days of the date of the letters of authority, you must submit to the court the information necessary for computation of the probate inventory fee. You must also provide the name and address of each financial institution listed on your inventory at the time the inventory is presented to the court. The address for a financial institution shall be either that of the institution's main headquarters or the branch used most frequently by the personal representative.

"Change of Address: You must keep the court and all interested persons informed in writing within 7 days of any change in your address."

"Notice of Continued Administration: If you are unable to complete the administration of the estate within one year of the original personal representative's appointment, you must file with the court and all interested persons a notice that the estate remains under administration, specifying the reason for the continuation of the administration. You must give this notice within 28 days of the first anniversary of the original appointment and all subsequent anniversaries during which the administration remains uncompleted."

"Duty to Complete Administration of Estate: You must complete the administration of the estate and file appropriate closing papers with the court. Failure to do so may result in personal assessment of costs."

(C) Claim by Personal Representative. A claim by a personal representative against the estate for an obligation that arose before the death of the decedent shall only be allowed in a formal proceeding by order of the court.

(D) Requiring or Filing of Additional Papers. Except in formal proceedings and supervised administration, the court may not require the filing of any papers other

than those required to be filed by statute or court rule. However, additional papers may be filed under MCR 5.113(D).

### **Rule 5.308 Formal Proceedings**

(A) Accounts. Any account filed with the court must be in the form required by MCR 5.310(C)(2)(c).

(B) Determination of Heirs.

(1) Determination During Estate Administration. Every petition for formal probate of a will or for adjudication of intestacy shall include a request for a determination of heirs unless heirs were previously determined. Determination of heirs is also required whenever supervised administration is requested. No other petition for a formal proceeding, including a petition to appoint a personal representative which does not request formal probate of a will or adjudication of intestacy, need contain a request for determination of heirs. The personal representative or an interested person may at any time file a petition for determination of heirs. Heirs may only be determined in a formal hearing.

(2) Determination Without Estate Administration.

(a) Petition and Testimony Form. Any person may initiate a formal proceeding to determine intestacy and heirs without appointment of a personal representative by filing a petition and a sworn testimony form, executed before a person authorized to administer oaths, sufficient to establish the domicile of the decedent at the time of death and the identity of the interested persons.

(b) Notice, Publication. The petitioner must serve notice of hearing on all interested persons. If an interested person's address or whereabouts is not known, the petitioner shall serve notice on that person by publication as provided in MCR 5.105(A)(3). The court may require other publication if it deems necessary.

(c) Order. If notice and proofs are sufficient, the court must enter an order determining the date of death, the domicile of the decedent at the time of death, whether the decedent died intestate, and the names of the heirs.

(d) Closing File. If there are no further requests for relief and no appeal, the court may close its file.

### **Rule 5.309 Informal Proceedings**

(A) Denial of Application. If the probate register denies the application for informal probate or informal appointment, the applicant may file a petition for a formal proceeding, which may include a request for supervised administration.

(B) Effect of Form of Administration in Another State or Country. The fact that any particular form of administration has been initiated in the estate of a decedent in another state or country does not preclude any other form of proceedings with respect to that decedent in Michigan without regard to the form of the proceeding in the other state or country.

(C) Notice of Intent to Seek Informal Appointment as Personal Representative.

(1) A person who desires to be appointed personal representative in informal proceedings must give notice of intent to seek appointment and a copy of the application to each person having a prior or equal right to appointment who does not waive this right in writing before the appointment is made.

(2) Service of notice of intent to seek appointment and a copy of the application must be made at least 14 days by mail or 7 days by personal service before appointment as personal representative. If the address of one or more of the persons having a prior or equal right to appointment is unknown and cannot be ascertained after diligent inquiry, notice of the intent to file the application must be published pursuant to MCR 5.106 at least 14 days prior to the appointment, but a copy of the application need not be published.

(3) Proof of service must be filed with the court along with the application for informal appointment as personal representative.

(D) Publication. If the address of an heir, devisee, or other interested person entitled to the information on the informal probate under MCL 700.3306 is unknown and cannot be ascertained after diligent inquiry, the information in MCL 700.3306(2) must be provided by publication pursuant to MCR 5.106. Publication of notice under this rule is not required if a personal representative has been appointed and provided notice under MCR 5.304.

### **Rule 5.310 Supervised Administration**

(A) Applicability. The other rules applicable to decedent estates apply to supervised administration unless they conflict with this rule.

(B) Commencement of Supervised Administration. A request for supervised administration in a decedent estate may be made in the petition for formal testacy and appointment proceedings. A petition for formal testacy and appointment proceedings including a request for supervised administration may be filed at any time during the estate proceedings if testacy has not previously been adjudicated. If testacy and appointment have been previously adjudicated, a separate petition for supervised administration may be filed at any time during administration of the estate. Whenever supervised administration is requested, the court must determine heirs unless heirs were previously determined, even if supervised administration is denied.

(C) Filing Papers With the Court. The personal representative must file the following additional papers with the court and serve copies on the interested persons:

(1) Inventory.

(a) Administration Commenced Supervised. If supervised administration is ordered at the commencement of the estate administration, the personal representative must file the inventory within 91 days of the date of the letters of authority.

(b) Administration Commenced Without Supervision. If supervised administration is ordered after a personal representative has been appointed,



the court must specify in the order a time for that personal representative to file the inventory.

(2) Accountings.

(a) Time for Filing. Unless the court designates a shorter period, the personal representative must file accountings within 56 days after the end of the accounting period. A final account must be filed when the estate is ready for closing or on removal of a personal representative. The court may order an interim accounting at any time the court deems necessary.

(b) Accounting Period. The accounting period ends on the anniversary date of the issuance of the letters of authority or, if applicable, on the anniversary date of the close of the last period covered by an accounting. The personal representative may elect to change the accounting period so that it ends on a different date. If the personal representative elects to make such a change, the first accounting period thereafter shall not be more than a year. A notice of the change must be filed with the court.

(c) Contents. All accountings must be itemized, showing in detail receipts and disbursements during the accounting period, unless itemization is waived by all interested persons. A written description of services performed must be included or appended regarding compensation sought by a personal representative. This description need not be duplicated in the order. The accounting must include notice that (i) objections concerning the accounting must be brought to the court's attention by an interested person because the court does not normally review the accounting without an objection; (ii) interested persons have a right to review proofs of income and disbursements at a time reasonably convenient to the personal representative and the interested person; (iii) interested persons may object to all or part of an accounting by filing an objection with the court before allowance of the accounting; and (iv) if an objection is filed and not otherwise resolved, the court will hear and determine the objection.

(d) Proof of Income and Disbursements. After filing and before the allowance of an accounting, the personal representative must make proofs of income and disbursements reasonably available for examination by any interested person who requests to see them or as required by the court. An interested person, with or without examination of the proofs of income and disbursements, may file an objection to an accounting with the court. If an interested person files an objection without examining the proofs and the court concludes that such an examination would help resolve the objection, the court may order the interested person to examine the proofs before the court hears the objection.

(e) Deferral of Hearings on Accountings. Hearing on each accounting may be deferred in the discretion of the court. The court in any case at any time may require a hearing on an accounting with or without a request by an interested person.

(3) Notice of appointment.

- (4) Fees notice pursuant to MCR 5.313.
  - (5) Notice to spouse.
  - (6) Affidavit of any required publication.
  - (7) Such other papers as are ordered by the court.
- (D) Tax Information. The personal representative must file with the court
- (1) in the case of a decedent dying before October 1, 1993, proof that all Michigan inheritance taxes have been paid or
  - (2) in the case of an estate of a decedent dying after September 30, 1993, either
    - (a) if a federal estate tax return was required to be filed for the decedent, proof from the Michigan Department of Treasury that all Michigan estate taxes have been paid, or
    - (b) if no federal estate tax return was required to be filed for the decedent, a statement that no Michigan estate tax is due.
- (E) Notice to Personal Representative. When supervised administration is ordered, the court must serve a written notice of duties on the personal representative. The notice must be substantially as follows:
- "Inventories: You are required to file an inventory of the assets of the estate within 91 days of the date of your letters of authority or as ordered by the court. The inventory must list in reasonable detail all the property owned by the decedent at the time of death, indicating, for each listed item, the fair market value at the time of decedent's death and the type and amount of any encumbrance. If the value of any item has been obtained through an appraiser, the inventory should include the appraiser's name and address with the item or items appraised by that appraiser.
- "Accountings: You are required to file annually, or more often if the court directs, a complete itemized accounting of your administration of the estate, showing in detail all the receipts and disbursements and the property remaining in your hands together with the form of the property. When the estate is ready for closing, you are required to file a final accounting and an itemized and complete list of all properties remaining. Subsequent annual and final accountings must be filed within 56 days after the close of the accounting period.
- "Change of Address: You are required to keep the court and interested persons informed in writing within 7 days of any change in your address.
- "Notice of Continued Administration: If you are unable to complete the administration of the estate within one year of the original personal representative's appointment, you must file with the court and all interested persons a notice that the estate remains under administration, specifying the reason for the continuation of the administration. You must give this notice within 28 days of the first anniversary of the original appointment and all

subsequent anniversaries during which the administration remains uncompleted.

"Duty to Complete Administration of Estate: You must complete the administration of the estate and file appropriate closing papers with the court. Failure to do so may result in personal assessment of costs."

(F) Changing from Supervised to Unsupervised Administration. At any time during supervised administration, any interested person or the personal representative may petition the court to terminate supervision of administration. The court may terminate supervision unless the court finds that proceeding with supervision is necessary under the circumstances. Termination of supervision does not discharge the personal representative.

(G) Approval of compensation of an attorney must be sought pursuant to MCR 5.313.

(H) Order of Complete Estate Settlement. An estate being administered in supervised administration must be closed under MCL 700.3952, using the procedures specified in MCR 5.311(B)(1).

### **Rule 5.311 Closing Estate**

(A) Closing by Sworn Statement. In unsupervised administration, a personal representative may close an estate by filing a sworn closing statement under MCL 700.3954 or 700.3988.

(B) Formal Proceedings.

(1) Requirements for Order of Complete Estate Settlement under MCL 700.3952. An estate being administered in supervised administration must be closed by an order for complete estate settlement under MCL 700.3952. All other estates may be closed under that provision. A petition for complete estate settlement must state the relief requested. If the petitioner requests a determination of testacy, the petitioner must comply with the requirements of the statute and court rules dealing with a determination of testacy in a formal proceeding.

(2) Requirements for Settlement Order under MCL 700.3953. A personal representative or a devisee may file a petition for a settlement order under MCL 700.3953; only in an estate being administered under a will admitted to probate in an informal proceeding. The petition may not contain a request for a determination of the decedent testacy status in a formal proceeding.

(3) Discharge. A personal representative may petition for discharge from liability with notice to the interested persons. A personal representative who files such a petition with the court must also file the papers described in MCR 5.310(C) and (D), as applicable, proofs of service of those papers that are required to be served on interested persons, and such other papers as the court may require. The court may order the personal representative discharged if the court is satisfied that the personal representative has properly administered the estate.

(4) Other Requests for Relief. With respect to other requests for relief, the petitioner must file appropriate papers to support the request for relief.

(5) Order. If the estate administration is completed, the order entered under MCL 700.3952 or MCL 700.3953 shall, in addition to any other relief, terminate the personal representative's authority and close the estate.

(C) Closing of Reopened Estate. After completion of the reopened estate administration, the personal representative shall proceed to close the estate by filing a petition under MCL 700.3952 or MCL 700.3953 or a supplemental closing statement under MCL 700.3954. If a supplemental closing statement is filed, the personal representative must serve a copy on each interested person. If an objection is not filed within 28 days, the personal representative is entitled to receive a supplemental certificate of completion.

### **Rule 5.312 Reopening Decedent Estate**

(A) Reopening by Application. If there is good cause to reopen a previously administered estate, other than an estate that was terminated in supervised administration, any interested person may apply to the register to reopen the estate and appoint the former personal representative or another person who has priority. For good cause and without notice, the register may reopen the estate, appoint the former personal representative or a person who has priority, and issue letters of authority with a specified termination date.

(B) Reopening by Petition. The previously appointed personal representative or an interested person may file a petition with the court to reopen the estate and appoint a personal representative under MCL 700.3959.

(C) Calculation of Due Dates. For purposes of determining when the inventory fee calculation, the inventory filing, the inventory fee payment, and the notice of continued administration are due, a reopened decedent estate is to be treated as a new case.

### **Rule 5.313 Compensation of Attorneys**

(A) Reasonable Fees and Costs. An attorney is entitled to receive reasonable compensation for legal services rendered on behalf of a personal representative, and to reimbursement for costs incurred in rendering those services. In determining the reasonableness of fees, the court must consider the factors listed in MRPC 1.5(a). The court may also take into account the failure to comply with this rule.

(B) Written Fee Agreement. At the commencement of the representation, the attorney and the personal representative or the proposed personal representative must enter into a written fee agreement signed by them. A copy of the agreement must be provided to the personal representative.

(C) Records. Regardless of the fee agreement, every attorney who represents a personal representative must maintain time records for services that must reflect the following information: the identity of the person performing the services, the date the services are performed, the amount of time expended in performing the services, and a brief description of the services.

(D) Notice to Interested Persons. Within 14 days after the appointment of a personal representative or the retention of an attorney by a personal representative, whichever is later, the personal representative must mail to the interested persons whose interests will be affected by the payment of attorney fees, a notice in the form substantially approved by the State Court Administrator and a copy of the written fee agreement. The notice must state:

- (1) the anticipated frequency of payment,
- (2) that the person is entitled to a copy of each statement for services or costs upon request,
- (3) that the person may object to the fees at any time prior to the allowance of fees by the court,
- (4) that an objection may be made in writing or at a hearing and that a written objection must be filed with the court and a copy served on the personal representative or attorney.

(E) Payment of Fees. A personal representative may make, and an attorney may accept, payments for services and costs, on a periodic basis without prior court approval if prior to the time of payment

- (1) the attorney and personal representative have entered a written fee agreement;
- (2) copies of the fee agreement and the notice required by subrule (D) have been sent to all interested persons who are affected;
- (3) a statement for services and costs (containing the information required by subrule [C]) has been sent to the personal representative and each interested person who has requested a copy of such statement; and
- (4) no written, unresolved objection to the fees, current or past, has been served on the attorney and personal representative.

In all other instances, attorney fees must be approved by the court prior to payment. Costs may be paid without prior court approval. Attorney fees and costs paid without prior court approval remain subject to review by the court.

(F) Claims for compensation, Required Information. Except when the compensation is consented to by all the parties affected, the personal representative must append to an accounting, petition, or motion in which compensation is claimed a statement containing the information required by subrule (C).

(G) Contingent Fee Agreements under MCR 8.121. Subrules (C), (E), and (F) of this rule do not apply to a contingent fee agreement between a personal representative and an attorney under MCR 8.121.

## Subchapter 5.400 Guardianship, Conservatorship, and Protective Order Proceedings

### Rule 5.401 General Provisions

This subchapter governs guardianships, conservatorships, and protective order proceedings. The other rules in chapter 5 also apply to these proceedings unless they conflict with rules in this subchapter. Except as modified in this subchapter, proceedings for guardianships of adults and minors, conservatorships, and protective orders shall be in accordance with the Estates and Protected Individuals Code, 1998 PA 386 and, where applicable, the Mental Health Code, 1974 PA 258, as amended.

### Rule 5.402 Common Provisions

(A) Petition; Multiple Prayers. A petition for the appointment of a guardian or a conservator or for a protective order may contain multiple prayers for relief.

(B) Petition by Minor. A petition and a nomination for the appointment of a guardian or conservator of a minor may be executed and made by a minor 14 years of age or older.

(C) Responsibility for Giving Notice; Manner of Service. The petitioner is responsible for giving notice of hearing. Regardless of statutory provisions, an interested person may be served by mail, by personal service, or by publication when necessary; however, if the person who is the subject of the petition is 14 years of age or older, notice of the initial hearing must be served on the person personally unless another method of service is specifically permitted in the circumstances.

(D) Letters of Authority. On the filing of the acceptance of appointment or bond required by the order appointing a fiduciary, the court shall issue letters of authority on a form approved by the state court administrator. Any restriction or limitation of the powers of a guardian or conservator must be set forth in the letters of authority.

### Rule 5.403 Proceedings on Temporary Guardianship

(A) Limitation. The court may appoint a temporary guardian only in the course of a proceeding for permanent guardianship.

(B) Notice of Hearing, Minor. For good cause stated on the record and included in the order, the court may shorten the period for notice of hearing or may dispense with notice of a hearing for the appointment of a temporary guardian of a minor, except that the minor shall always receive notice if the minor is 14 years of age or older. If a temporary guardian is appointed following an ex parte hearing in a case in which the notice period was shortened or eliminated, the court shall send notice of the appointment to all interested persons. The notice shall inform the interested persons about their right to object to the appointment, the process for objecting, and the date of the next hearing, if any. If an interested person objects to the appointment of a temporary guardian following an ex parte hearing in a case in

which the notice period was shortened or eliminated, the court shall hold a hearing on the objection within 14 days from the date the objection is filed.

(C) Temporary Guardian for Incapacitated Individual Where no Current Appointment; Guardian Ad Litem. For the purpose of an emergency hearing for appointment of a temporary guardian of an alleged incapacitated individual, the court shall appoint a guardian ad litem unless such appointment would cause delay and the alleged incapacitated individual would likely suffer serious harm if immediate action is not taken. The duties of the guardian ad litem are to visit the alleged incapacitated individual, report to the court and take such other action as directed by the court. The requirement of MCL 700.5312(1) that the court hold the fully noticed hearing within 28 days applies only when the court grants temporary relief.

(D) Temporary Guardian for Minor.

(1) Prior to Appointment of Guardian. If necessary during proceedings for the appointment of a guardian for a minor, the court may appoint a temporary guardian after a hearing at which testimony is taken. Where a petition for appointment of a limited guardian has been filed, the court, before the appointment of a temporary guardian, shall take into consideration the limited guardianship placement plan in determining the powers and duties of the parties during the temporary guardianship.

(2) When Guardian Previously Appointed. If it comes to the attention of the court that a guardian of a minor is not properly performing the duties of a guardian, the court, after a hearing at which testimony is taken, may appoint a temporary guardian for a period not to exceed 6 months. The temporary guardian shall have the authority of the previously appointed guardian whose powers are suspended during the term of the temporary guardianship. The temporary guardian shall determine whether a petition to remove the guardian should be filed. If such a petition is not filed, the temporary guardian shall report to court with recommendations for action that the court should take in order to protect the minor upon expiration of the term of the temporary guardian. The report shall be filed within 1 month of the date of the expiration of the temporary guardianship.

#### **Rule 5.404 Guardianship of Minor**

(A) Petition for Guardianship of Minor. If the court requires the petitioner to file a social history before hearing a petition for guardianship of a minor, it shall do so on a form approved by the state court administrative office. The social history for minor guardianship is confidential, and it is not to be released, except on order of the court, to the parties or the attorneys for the parties.

(B) Limited Guardianship.

(1) Modification of Placement Plan.

(a) The parties to a limited guardianship placement plan may file a proposed modification of the plan without filing a petition. The proposed

modification shall be substantially in the form approved by the state court administrator.

(b) The court shall examine the proposed modified plan and take further action under subrules (c) and (d) within 14 days of the filing of the proposed modified plan.

(c) If the court approves the proposed modified plan, the court shall endorse the modified plan and notify the interested persons of its approval.

(d) If the court does not approve the modification, the court either shall set the proposed modification plan for a hearing or notify the parties of the objections of the court and that they may schedule a hearing or submit another proposed modified plan.

(2) Limited Guardianship of the Child of a Minor. On the filing of a petition for appointment of a limited guardian for a child whose parent is an unemancipated minor, the court shall appoint a guardian ad litem to represent the minor parent. A limited guardianship placement plan is not binding on the minor parent until consented to by the guardian ad litem.

(C) Limited Guardianship Placement Plans and Court-Structured Plans.

(1) All limited guardianship placement plans and court-structured plans shall at least include provisions concerning all of the following:

- (a) visitation and contact with the minor by the parent or parents sufficient to maintain a parent and child relationship;
- (b) the duration of the guardianship;
- (c) financial support for the minor; and
- (d) in a limited guardianship, the reason why the parent or parents are requesting the court to appoint a limited guardian for the minor.

(2) All limited guardianship placement plans and court-structured plans may include the following:

- (a) a schedule of services to be followed by the parent or parents, child, and guardian and
- (b) any other provisions that the court deems necessary for the welfare of the child.

(D) Evidence.

(1) Reports, Admission Into Evidence. At any hearing concerning a guardianship of a minor, all relevant and material evidence, including written reports, may be received by the court and may be relied on to the extent of their probative value, even though such evidence may not be admissible under the Michigan Rules of Evidence.

(2) Written Reports, Review and Cross-Examination. Interested persons shall be afforded an opportunity to examine and controvert written reports so received and, in the court's discretion, may be allowed to cross-examine individuals making reports when such individuals are reasonably available.



(3) Privilege, Abrogation. No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.

(E) Review of Guardianship for Minor.

(1) Periodic Review. The court shall conduct a review of a guardianship of a minor annually in each case where the minor is under age 6 as of the anniversary of the qualification of the guardian. The review shall be commenced within 63 days after the anniversary date of the qualification of the guardian. The court may at any time conduct a review of a guardianship as it deems necessary.

(2) Investigation. The court shall appoint the Family Independence Agency or any other person to conduct an investigation of the guardianship of a minor. The investigator shall file a written report with the court within 28 days of such appointment. The report shall include a recommendation regarding whether the guardianship should be continued or modified and whether a hearing should be scheduled. If the report recommends modification, the report shall state the nature of the modification.

(3) Judicial Action. After informal review of the report, the court shall enter an order continuing the guardianship or set a date for a hearing to be held within 28 days. If a hearing is set, an attorney may be appointed to represent the minor.

(F) Termination of Guardianship.

(1) Necessity of Order. A guardianship may terminate without order of the court on the minor's death, adoption, marriage, or attainment of majority. No full, testamentary, or limited guardianship shall otherwise terminate without an order of the court.

(2) Continuation of Guardianship. When a court has continued a guardianship for a period not exceeding one year, the court shall hold the final hearing not less than 28 days before the expiration of the period of continuance.

(3) Petition for Family Division of Circuit Court to Take Jurisdiction. If the court appoints an attorney or the Family Independence Agency to investigate whether to file a petition with the family division of circuit court to take jurisdiction of the minor, the attorney or Family Independence Agency shall, within 21 days, report to the court that a petition has been filed or why a petition has not been filed.

(a) If a petition is not filed with the family division, the court shall take such further action as is warranted, except the guardianship may not be continued for more than one year after the hearing on the petition to terminate.

(b) If a petition is filed with the family division, the guardianship shall terminate when the family division authorizes the petition under MCL

712A.11, unless the family division determines that continuation of such guardianship pending disposition is necessary for the well-being of the child.

(4) Resignation of Limited Guardian. A petition by a limited guardian to resign shall be treated as a petition for termination of the limited guardianship. The parents or the sole parent with the right to custody may file a petition for a new limited guardianship. If the court does not approve the new limited guardianship or if no petition is filed, the court may proceed in the manner for termination of a guardianship under section 5209 or 5219 of the Estates and Protected Individuals Code, MCL 700.5209 or MCL 700.5219.

(5) Petition for Termination by a Party Other Than a Parent. If a petition for termination is filed by other than a parent, the court may proceed in the manner for termination of a guardianship under section 5209 of the Estates and Protected Individuals Code, MCL 700.5209.

### **Rule 5.405 Proceedings on Guardianship of Incapacitated Individual**

#### **(A) Examination by Physician or Mental Health Professional.**

(1) Admission of Report. The court may receive into evidence without testimony a written report of a physician or mental health professional who examined an individual alleged to be incapacitated, provided that a copy of the report is filed with the court five days before the hearing and that the report is substantially in the form required by the state court administrator. A party offering a report must promptly inform the parties that the report is filed and available. The court may issue on its own initiative, or any party may secure, a subpoena to compel the preparer of the report to testify.

(2) Abrogation of Privilege. A report ordered by the court may be used in guardianship proceedings without regard to any privilege. Any privilege regarding a report made as part of an independent evaluation at the request of a respondent is waived if the respondent seeks to have the report considered in the proceedings.

(3) Determination of Fee. As a condition of receiving payment, the physician or mental health professional shall submit an itemized statement of services and expenses for approval. In reviewing a statement, the court shall consider the time required for examination, evaluation, preparation of reports and court appearances; the examiner's experience and training; and the local fee for similar services.

#### **(B) Hearings at Site Other Than Courtroom.** When hearings are not held in the courtroom where the court ordinarily sits, the court shall ensure a quiet and dignified setting that permits an undisturbed proceeding and inspires the participants' confidence in the integrity of the judicial process.

#### **(C) Guardian of Incapacitated Individual Appointed by Will or Other Writing.**

(1) Appointment. A guardian appointed by will or other writing under MCL 700.5301 may qualify after the death or adjudicated incapacity of a parent or spouse who had been the guardian of an incapacitated individual by filing an acceptance of appointment with the court that has jurisdiction over the

guardianship. Unless the court finds the person unsuitable or incompetent for the trust, the court shall issue to the nominated guardian letters of guardianship equivalent to those that had been issued to the deceased guardian.

(2) Notice, Revocation. The testamentary guardian shall notify the court in which the testamentary instrument has been or will be filed of the appointment as guardian. The probating court shall notify the court having jurisdiction over the guardianship if the will is denied probate, and the court having the guardianship jurisdiction shall immediately revoke the letters of guardianship.

#### **Rule 5.406 Testamentary Guardian of Individual With Developmental Disabilities**

(A) Appointment. If the court has not appointed a standby guardian, a testamentary guardian may qualify after the death of a parent who had been the guardian of an individual with developmental disabilities by filing an acceptance of appointment with the court that appointed the deceased parent as guardian. If the nominated person is to act as guardian of the estate of the ward, the guardian should also file a bond in the amount last required of the deceased guardian. Unless the court finds the person unsuitable or incompetent for the appointment, the court shall issue to the testamentary guardian letters of authority equivalent to those that had been issued to the deceased guardian.

(B) Notice, Revocation. The testamentary guardian must notify the court in which the testamentary instrument has been or will be filed of the appointment as guardian. The probating court shall notify the court having jurisdiction over the guardianship if the will is denied probate, and the court having the guardianship jurisdiction shall immediately revoke the letters of authority.

#### **Rule 5.407 Conservatorship; Settlements**

A conservator may not enter into a settlement in any court on behalf of the protected person if the conservator will share in the settlement unless a guardian ad litem has been appointed to represent the protected person's interest and has consented to such settlement in writing or on the record or the court approves the settlement over any objection.

#### **Rule 5.408 Review and Modification of Guardianships of Legally Incapacitated Individuals**

(A) Periodic Review of Guardianship.

(1) Periodic Review. The court shall commence a review of a guardianship of a legally incapacitated individual not later than 1 year after the appointment of the guardian and not later than every 3 years thereafter.

(2) Investigation. The court shall appoint a person to investigate the guardianship and report to the court by a date set by the court. The person appointed must visit the legally incapacitated individual or include in the report to the court an explanation why a visit was not practical. The report shall include a recommendation on whether the guardianship should be modified.

(3) Judicial Action. After informal review of the report, the court shall enter an order continuing the guardianship, or enter an order appointing an attorney to represent the legally incapacitated individual for the purpose of filing a petition for modification of guardianship. In either case, the court shall send a copy of the report and the order to the legally incapacitated individual and the guardian.

(4) Petition for Modification. If an attorney is appointed under subrule (A)(3), the attorney shall file proper pleadings with the court within 14 days of the date of appointment.

**(B) Petition for Modification; Appointment of Attorney or Guardian Ad Litem.**

(1) Petition by Legally Incapacitated Individual. If a petition for modification or written request for modification comes from the legally incapacitated individual and that individual does not have an attorney, the court shall immediately appoint an attorney.

(2) Petition by Person Other Than Legally Incapacitated Individual. If a petition for modification or written request for modification comes from some other party, the court shall appoint a guardian ad litem. If the guardian ad litem ascertains that the legally incapacitated individual contests the relief requested, the court shall appoint an attorney for the legally incapacitated individual and terminate the appointment of the guardian ad litem.

**Rule 5.409 Report of Guardian; Inventories and Accounts of Conservators**

(A) Reports. A guardian shall file a written report annually within 56 days after the anniversary of appointment and at other times as the court may order. Reports must be substantially in the form approved by the state court administrator. The guardian must serve the report on the persons listed in MCR 5.125(C)(23).

**(B) Inventories.**

(1) Guardian. At the time of appointing a guardian, the court shall determine whether there would be sufficient assets under the control of the guardian to require the guardian to file an inventory. If the court determines that there are sufficient assets, the court shall order the guardian to file an inventory.

(2) Filing and Service. Within 56 days after appointment, a conservator or, if ordered to do so, a guardian shall file with the court a verified inventory of the estate of the protected person, serve copies on the persons required by law or court rule to be served, and file proof of service with the court.

(3) Contents. The guardian or conservator must provide the name and address of each financial institution listed on the inventory. The address for a financial institution shall be either that of the institution's main headquarters or the branch used most frequently by the guardian or conservator. Property that the protected individual owns jointly or in common with others must be listed on the inventory along with the type of ownership and value.

(C) Accounts.

(1) Filing, Service. A conservator must file an annual account unless ordered not to by the court. A guardian must file an annual account if ordered by the court. The provisions of the court rules apply to any account that is filed with the court, even if the account was not required by court order. The account must be served on interested persons, and proof of service must be filed with the court. The copy of the account served on interested persons must include a notice that any objections to the account should be filed with the court and noticed for hearing. When required, an accounting must be filed within 56 days after the end of the accounting period.

(2) Accounting Period. The accounting period ends on the anniversary date of the issuance of the letters of authority, unless the conservator selects another accounting period or unless the court orders otherwise. If the conservator selects another accounting period, notice of that selection shall be filed with the court. The accounting period may be a calendar year or a fiscal year ending on the last day of a month. The conservator may use the same accounting period as that used for income tax reporting, and the first accounting period may be less than a year but not longer than a year.

(3) Hearing. On filing, the account may be set for hearing or the hearing may be deferred to a later time.

(4) Exception, Conservatorship of Minor. Unless otherwise ordered by the court, no accounting is required in a minor conservatorship where the assets are restricted or in a conservatorship where no assets have been received by the conservator. If the assets are ordered to be placed in a restricted account, proof of the restricted account must be filed with the court within 28 days of the conservator's qualification or as otherwise ordered by the court. The conservator must file with the court an annual verification of funds on deposit with a copy of the corresponding financial institution statement attached.

(5) Contents. The accounting is subject to the provisions of MCR 5.310(C)(2)(c) and (d), except that references to a personal representative shall be to a conservator. A copy of the corresponding financial institution statement must be presented to the court or a verification of funds on deposit must be filed with the court, either of which must reflect the value of all liquid assets held by a financial institution dated within 30 days after the end of the accounting period, unless waived by the court for good cause.

(6) Periodic Review. The court shall either review or allow accounts annually, unless no account is required under MCR 5.409(C)(1) or (C)(4). Accounts shall be set for hearing to determine whether they will be allowed at least once every three years.

(D) Service and Notice. A copy of the account must be sent to the interested persons as provided by these rules. Notice of hearing to approve the account must be given to interested persons as provided in subchapter 5.100 of these rules.

(E) Procedures. The procedures prescribed in MCR 5.203, 5.204 and 5.310(E) apply to guardianship and conservatorship proceedings, except that references to a

personal representative shall be to a guardian or conservator, as the situation dictates.

(F) Death of Ward. If an individual who is subject to a guardianship or conservatorship dies, the guardian or conservator must give written notification to the court within 14 days of the individual's date of death. If accounts are required to be filed with the court, a final account must be filed within 56 days of the date of death.

## Subchapter 5.500 Trust Proceedings

### **Rule 5.501 Trust Proceedings in General**

(A) **Applicability.** This subchapter applies to all trusts as defined in MCL 700.1107(m), including a trust established under a will and a trust created by court order or a separate document.

(B) **Unsupervised Administration of Trusts.** Unless an interested person invokes court jurisdiction, the administration of a trust shall proceed expeditiously, consistent with the terms of the trust, free of judicial intervention and without court order, approval, or other court action. Neither registration nor a proceeding concerning a trust results in continued supervisory proceedings.

(C) **Commencement of Trust Proceedings.** A proceeding concerning a trust is commenced by filing a petition in the court where the trust is or could be properly registered. Registration of the trust is not required for filing a petition.

(D) **Appointment of Trustee not Named in Creating Document.** An interested person may petition the court for appointment of a trustee when the order, will, or other document creating a trust does not name a trustee or when the person named in the creating document is either not available or cannot be qualified as trustee. The petitioner must give notice of hearing on the petition to the interested persons. The court may issue an order appointing as trustee the person nominated in the petition or another person. The order must state whether the trustee must file a bond or execute an acceptance.

(E) **Qualification of Trustee.** A trustee appointed by an order of the court, nominated as a trustee in a will that has been admitted to probate or nominated as a successor in a document other than a will that created a trust shall qualify by executing an acceptance indicating the nominee's willingness to serve. The trustee must serve the acceptance and order, if any, on the then known current trust beneficiaries and, in the case of a testamentary trustee, on the personal representative of the decedent estate, if one has been appointed. No letters of trusteeship shall be issued by the court. The trustee or the attorney for the trustee may establish the trustee's incumbency by executing an affidavit to that effect, identifying the trustee and the trust document and indicating that any required bond has been filed with the court and is in force.

(F) **Transitional Rule.** A trustee of a trust under the jurisdiction of the court before April 1, 2000, may request an order of the court closing court supervision and the file. On request by the trustee or on its own initiative, the court may order the closing of supervision of the trust and close the file. The trustee must give notice of the order to all current trust beneficiaries. Closing supervision does not preclude any interested trust beneficiary from later petitioning the court for supervision. Without regard to whether the court file is closed, all letters of authority for existing trusts are canceled as of April 1, 2000, and the trustee's incumbency may be established in the manner provided in subrule (E).

### **Rule 5.502 Supervision of Trusts**

If, during a trust proceeding, the court orders supervision of the trust, the court shall specify the terms of the supervision.

### **Rule 5.503 Notice to Creditors by Trustee of Revocable Inter Vivos Trust**

(A) Place of Publication, Proof. A notice that must be published under MCL 700.7504 must be published in a newspaper as defined by MCR 2.106(F) in the county in which the settlor was domiciled at the time of death. No proof of publication need be filed in connection with unsupervised administration of a trust.

(B) When Notice is not Required. The trustee of a revocable inter vivos trust is not required to give notice to creditors in the following situations:

- (1) The costs of trust administration equal or exceed the value of the trust estate, or
- (2) The settlor has been dead for more than 3 years.



## Subchapter 5.730 Mental Health Rules

### **Rule 5.730 Mental Health Code; Application**

Except as modified by this subchapter, civil admission and discharge proceedings under the Mental Health Code are governed by the rules generally applicable to probate court.

### **Rule 5.732 Attorneys**

(A) Continuing Appointment of Attorney. The attorney of record must represent the individual in all probate court proceedings under the Mental Health Code until the attorney is discharged by court order or another attorney has filed an appearance on the individual's behalf.

(B) Duties. The attorney must serve as an advocate for the individual's preferred position. If the individual does not express a preference, the attorney must advocate for the position that the attorney believes is in the individual's best interest.

(C) Waiver; Appointment of Guardian Ad Litem. The individual may waive an attorney only in open court and after consultation with an attorney. The court may not accept the waiver if it appears that the waiver is not voluntarily and understandingly made. If an attorney is waived, the court may appoint a guardian ad litem for the individual.

### **Rule 5.733 Appointment of Independent Examiner; Determination of Fees and Expenses**

(A) Appointment. When an indigent individual requests an independent clinical evaluation, the court must appoint the physician, psychiatrist, or licensed psychologist chosen by the individual, unless the person chosen refuses to examine the individual or the requested appointment would require unreasonable expense.

(B) Determination of Fee. In its order of appointment, a court must direct the independent examiner to submit an itemized statement of services and expenses for approval. In reviewing a fee, the court must consider:

- (1) the time required for examination, evaluation, preparation of reports, and court appearances;
- (2) the examiner's experience and training; and
- (3) the local fee for similar services.

### **Rule 5.734 Service of Papers; Notice of Subsequent Petitions; Time for Service**

(A) Service of Papers. When required by the Mental Health Code, the court must have the necessary papers served. The individual must be served personally. The individual's attorney also must be served.

(B) Notice of Subsequent Petitions. The court must serve a copy of a petition for the second or continuing order of involuntary mental health treatment or petition for discharge and the notice of hearing on all persons required to be served with notice of hearing on the initial petition or application for hospitalization.

(C) Time for Service.

(1) A notice of hearing must be served on the individual and the individual's attorney

(a) at least 2 days before the time of a hearing that is scheduled by the court to be held within 7 days or less; or

(b) at least 5 days before the time scheduled for other hearings.

(2) A notice of hearing must be served on other interested parties

(a) by personal service, at least 2 days before the time of a hearing that is scheduled by the court to be held within 7 days or less; or

(b) by personal service or by mail, at least 5 days before the time scheduled for other hearings.

The court may permit service of a notice of hearing on the individual, the individual's attorney, or other interested parties within a shorter period of time with the consent of the individual and the individual's attorney.

### **Rule 5.735 Adjournment**

A hearing may be adjourned only for good cause. The reason for an adjournment must be submitted in writing to the court and to the opposing attorney or stated on the record.

### **Rule 5.737 Waiver of Rights**

Unless a statute or court rule requires that a waiver be made by the individual personally and on the record, a waiver may be in writing signed by the individual, witnessed by the individual's attorney, and filed with the court.

### **Rule 5.738 Conditions at Hearings**

(A) Hearings at Hospitals. When hearings are not held in the courtroom where the court ordinarily sits, the court shall ensure a quiet and dignified setting that permits an undisturbed proceeding and inspires the participants' confidence in the integrity of the judicial process.

(B) Clothing. The individual may attend a hearing in personal clothing.

(C) Restraints at Hearing. At a court hearing, the individual may not be handcuffed or otherwise restrained, except

(1) on the prior approval of the court, based on the individual's immediate past conduct indicating the individual is reasonably likely to try to escape or to inflict physical harm on himself or herself or others; or

(2) after an incident occurring during transportation in which the individual has attempted to escape or inflict physical harm on himself or herself or others.

### **Rule 5.738a Use of Interactive Video Technology**

(A) Probate courts may use two-way interactive video technology to conduct the proceedings outlined in subrule (B).

(B) Hearings. Probate courts may use two-way interactive video technology to conduct hearings concerning initial involuntary treatment, continuing mental health treatment, and petitions for guardianship involving persons receiving treatment in mental health facilities.

(C) Mechanics of Use. The use of two-way interactive video technology must be conducted in accordance with any requirements and guidelines established by the State Court Administrative Office. All proceedings at which such technology is used must be recorded verbatim by the court.

### **Rule 5.740 Jury Trial**

(A) Persons Permitted to Demand Jury Trial. Notwithstanding MCR 5.158(A), only an individual alleged to be in need of involuntary mental health treatment or an individual with mental retardation alleged to meet the criteria for judicial admission may demand a jury trial in a civil admission proceeding.

(B) Time for Demand. An individual may demand a jury trial any time before testimony is received at the hearing for which the jury is sought.

(C) Verdict in Commitment Proceedings. In proceedings involving possible commitment to a hospital or facility under the Mental Health Code, or to a correctional or training facility under the juvenile code, the jury's verdict must be unanimous.

(D) Fee. A jury fee is not required from a party demanding a jury trial under the Mental Health Code.

### **Rule 5.741 Inquiry Into Adequacy of Treatment**

(A) Written Report or Testimony Required. Before ordering a course of involuntary mental health treatment or of care and treatment at a center, the court must receive a written report or oral testimony describing the type and extent of treatment that will be provided to the individual and the appropriateness and adequacy of this treatment.

(B) Use of Written Report; Notice. The court may receive a written report in evidence without accompanying testimony if a copy is filed with the court before the hearing. At the time of filing the report with the court, the preparer of the report must promptly provide the individual's attorney with a copy of the report. The attorney may subpoena the preparer of the report to testify.

### **Rule 5.743 Appeal by Individual Receiving Involuntary Mental Health Treatment Who is Returned to Hospital After Authorized Leave**

(A) Applicability. This rule applies to an individual receiving involuntary mental health treatment who has been returned to a hospital following an authorized leave.

(B) Notifications. When an individual receiving involuntary mental health treatment has been returned to a hospital from an authorized leave in excess of 10 days, the director of the hospital must, within 24 hours, notify the court of the return and notify the individual of the right to appeal the return and have a hearing to determine the appeal. The court must notify the individual's attorney or appoint a new attorney to consult with the individual and determine whether the individual desires a hearing.

(C) Request and Time for Hearing. An individual who wishes to appeal must request a hearing in writing within 7 days of the notice to the individual under subrule (B). The court must schedule a requested hearing to be held within 7 days of the court's receipt of the request.

(D) Reports Filed With Court. At least 3 days before the hearing, the director of the hospital must deliver to the court, the individual, and the individual's attorney, copies of a clinical certificate and a current alternative treatment report.

(E) Conduct of Hearing. At the hearing, the director of the hospital must show that the individual requires treatment in a hospital. The clinical certificate may be admitted in evidence without accompanying testimony by the preparer. However, the individual's attorney may subpoena the preparer of the clinical certificate to testify.

(F) Order After Hearing. If the court finds that the individual requires treatment at a hospital, it must dismiss the appeal and order the individual returned to the hospital. If the court finds that the director lacked an adequate basis for concluding that the individual requires further treatment in the hospital, it must do one of the following:

- (1) order the individual returned to authorized leave status; or
- (2) order treatment through an alternative to hospitalization
  - (a) (if the individual was under an order of hospitalization of up to 60 days), for a period not to exceed the difference between 90 days and the combined time the individual has been hospitalized and on authorized leave status, or
  - (b) (if the individual was under an order of hospitalization of up to 90 days or under a continuing order), for a period not to exceed the difference between 1 year and the combined time the individual has been hospitalized and on authorized leave status.

#### **Rule 5.743a Appeal by Administratively Admitted Individual Returned to Center After Authorized Leave**

(A) Applicability. This rule applies to an individual with a developmental disability who was admitted to a center by an administrative admission and who has been returned to a center following an authorized leave.

(B) Notifications. When an administratively admitted individual has been returned to a center from an authorized leave in excess of 10 days, the director of the center must, within 24 hours, notify the court of the return and notify the individual of the right to appeal the return. The court must notify the individual's guardian, if any,

and the parents of an individual who is a minor of the return and the right to appeal the return and have a hearing to determine the appeal.

(C) Request for Hearing. An individual who wishes to appeal that individual's return must request a hearing in writing within 7 days of the notice to the individual under subrule (B). If the individual is less than 13 years of age, the request may be made by the individual's parent or guardian. The court must schedule a requested hearing to be held within 7 days of the court's receipt of the request.

(D) Statement Filed With Court. At least 3 days before the hearing, the director of the center must deliver to the court, the individual, the individual's parents or guardian, if applicable, and the individual's attorney a statement setting forth:

- (1) the reason for the individual's return to the center;
- (2) the reason the individual is believed to need care and treatment at the center; and
- (3) the plan for further care and treatment.

(E) Conduct of Hearing. The hearing shall proceed as provided in § 511(4) of the Mental Health Code, MCL 330.1511. At the hearing, the director of the center must show that the individual needs care and treatment at the center and that no alternative to the care and treatment provided at the center is available and adequate to meet the individual's needs.

(F) Order After Hearing. If the court finds the individual requires care and treatment at the center, it must dismiss the appeal and order the individual to remain at the center. If the court finds the director did not sustain the burden of proof, it must order the individual returned to authorized leave status.

#### **Rule 5.743b Appeal by Judicially Admitted Individual Returned to Center After Authorized Leave**

(A) Applicability. This rule applies to an individual with mental retardation who has been admitted to a center by judicial order, and who has been on authorized leave for a continuous period of less than 1 year.

(B) Notifications. When a judicially admitted individual has been returned to a center from an authorized leave in excess of 10 days, the director of the center must, within 24 hours, notify the court of the return and notify the individual of the right to appeal the return and have a hearing to determine the appeal. The court must notify the individual's attorney or appoint a new attorney to consult with the individual and to determine whether the individual desires a hearing.

(C) Request for Hearing. An individual who wishes to appeal the return must request a hearing in writing within 7 days of the notice to the individual under subrule (B). The court must schedule a requested hearing to be held within 7 days of the court's receipt of the request.

(D) Statement Filed With Court. At least 3 days before the hearing, the director of the center must deliver to the court, the individual, and the individual's attorney a statement setting forth:

- (1) the reason for the individual's return to the center;

(2) the reason the individual is believed to need care and treatment at the center; and

(3) the plan for further care and treatment.

(E) Report. The court may order an examination of the individual and the preparation and filing with the court of a report that contains such information as the court deems necessary.

(F) Conduct of Hearing. The court shall proceed as provided in § 511(4) of the Mental Health Code, MCL 330.1511(4). At the hearing, the director of the center must show that the individual needs care and treatment at the center, and that no alternative to the care and treatment provided at the center is available and adequate to meet the individual's needs.

(G) Order After Hearing. If the court finds the individual requires care and treatment at the center, it must dismiss the appeal and order the individual to remain at the center. If the court finds the director did not sustain the burden of proof, it must do one of the following:

(1) order the individual returned to authorized leave status; or

(2) order the individual to undergo a program of care and treatment for up to one year as an alternative to remaining at the center.

#### **Rule 5.744 Proceedings Regarding Hospitalization Without a Hearing**

(A) Scope of Rule. This rule applies to any proceeding involving an individual hospitalized without a hearing as ordered by a court or a psychiatrist and the rights of that individual.

(B) Notification. A notification requesting an order of hospitalization or a notification requesting a change in an alternative treatment program, a notice of noncompliance, or a notice of hospitalization as ordered by a psychiatrist, must be in writing.

(C) Service of Papers. If the court enters a new or modified order without a hearing, the court must serve the individual with a copy of that order. If the order includes hospitalization, the court must also serve the individual with notice of the right to object and demand a hearing.

(D) Objection; Scheduling Hearing. An individual hospitalized without a hearing, either by order of the court or by a psychiatrist's order, may file an objection to the order not later than 7 days after receipt of notice of the right to object. The court must schedule a hearing to be held within 10 days after receiving the objection.

(E) Conduct of Hearing. A hearing convened under this rule is without a jury. At the hearing the party seeking hospitalization of the individual must present evidence that hospitalization is necessary.

### **Rule 5.744a Proceedings Regarding an Individual Subject to Judicial Admission who is Transferred to a Center from Alternative Setting**

(A) Applicability. This rule applies to an individual with mental retardation under court order to undergo a program of care and treatment as an alternative to admission to a center.

(B) Immediate Transfer. After the court receives written notification concerning the need to transfer a judicially admitted individual receiving alternative care and treatment, the court may direct the filing of additional information and may do one of the following:

- (1) modify its original order and direct the individual's transfer to another program of alternative care and treatment for the remainder of the 1-year period;
- (2) enter a new order directing the individual's admission to either
  - (a) a center recommended by the community mental health services program; or
  - (b) a licensed hospital requested by the individual or the individual's family if private funds are to be used; or
- (3) set a date for a hearing.

(C) Investigation Report. On receipt of notification, the court must promptly obtain from the community mental health services program or other appropriate agency a report stating

- (1) the reason for concern about the adequacy of the care and treatment being received at the time of the notification;
- (2) the continued suitability of that care and treatment; and
- (3) the adequacy of care and treatment available at another alternative or at a center or licensed hospital.

(D) Service of Papers. If the court enters a new order without a hearing, it must serve the interested parties with a copy of that order and a copy of the investigation report when it becomes available. If the order includes transfer of the individual to a center, the court must also serve the interested parties with written notification of the individual's right to object and demand a hearing.

(E) Hearing. If within 7 days of service under subrule (D) the court receives a written objection from the individual or the individual's attorney, guardian, or presumptive heir, the court must schedule a hearing to be held within 10 days of the court's receipt of the objection.

(F) Conduct of Hearing. A hearing convened under this rule is without a jury. At the hearing, the person seeking transfer of the individual to a center must present evidence that the individual had not complied with the applicable order or that the order is not sufficient to prevent the individual from inflicting harm or injuries on himself, herself or others. The evidence must support a finding that transfer to another alternative, a center or a licensed hospital is necessary.

(G) Order After Hearing. The court may affirm or rescind the order issued under subrule (B), order a new program of care and treatment, or order discharge. The court may not place the individual in a center without inquiring into the adequacy of care and treatment for that individual at that center.

#### **Rule 5.745 Multiple Proceedings**

(A) New Proceedings Not Prohibited. The admission of an individual under the Mental Health Code may not be invalidated because the individual is already subject to a court order as a result of a prior admission proceeding.

(B) Procedure. On being informed that an individual is subject to a previous court order, the court must:

(1) if it was the court issuing the previous order, dismiss the new proceeding and determine the proper disposition of the individual under its previous order or vacate the previous order and proceed under the new petition; or

(2) if the previous order was issued by another court, continue the new proceeding and issue an appropriate order. After entry of the order, the court with the new proceeding must consult with the court with the prior proceeding to determine if the best interests of the individual will be served by changing venue of the prior proceeding to the county where the new proceeding has been initiated. If not, the court with the new proceeding must transfer the matter to the other court.

(C) Disposition. The court may treat a petition or certificate filed in connection with the more recent proceeding as "notification" under MCR 5.743 or 5.744 and proceed with disposition under those rules.

#### **Rule 5.746 Placement of Individual with a Developmental Disability in a Facility**

(A) Petition for Authorization. If placement in a facility of an individual with a developmental disability has not been authorized or if permission is sought for authorization to place the individual in a more restrictive setting than previously ordered, a guardian of the individual must petition the court for authorization to place the individual in a facility or in a more restricted setting.

(B) Order. If the court grants the petition for authorization, it may order that:

(1) the guardian may execute an application for the individual's administrative admission to a specific center;

(2) the guardian may request the individual's temporary admission to a center for a period not to exceed 30 days for each admission; or

(3) the guardian may place the individual in a specific facility or class of facility as defined in MCL 330.1600.

(C) Notice of Hearing. Notice of hearing on a petition for authorization to place an individual must be given to those persons required to be served with notice of hearing for the appointment of a guardian.



**Rule 5.747 Petition for Discharge of Individual**

At a hearing on a petition for discharge of an individual, the burden is on the person who seeks to prevent discharge to show that the individual is a person requiring treatment.

**Rule 5.748 Transitional Provision on Termination of Indefinite Orders of Hospitalization**

If on March 27, 1996, any individual is subject to any order that may result in the individual's hospitalization for a period beyond March 27, 1997, a petition for a determination that the individual continues to require involuntary mental health treatment must be filed on or before the time set for the second periodic review after March 27, 1996. The petition may be for involuntary health treatment for a period of not more than one year. This rule expires on March 28, 1997.

## Subchapter 5.780 Miscellaneous Proceedings

### **Rule 5.784 Proceedings on a Durable Power of Attorney for Health Care or Mental Health Treatment**

(A) Petition, Who Shall File. The petition concerning a durable power of attorney for health care or mental health treatment must be filed by any interested party or the patient's attending physician.

(B) Venue. Venue for any proceeding concerning a durable power of attorney for health care or mental health treatment is proper in the county in which the patient resides or the county where the patient is found.

(C) Notice of Hearing, Service, Manner and Time.

(1) Manner of Service. If the address of an interested party is known or can be learned by diligent inquiry, notice must be by mail or personal service, but service by mail must be supplemented by facsimile or telephone contact within the period for timely service when the hearing is an expedited hearing or a hearing on the initial determination regarding whether the patient is unable to participate in medical or mental health treatment decisions.

(2) Waiving Service. At an expedited hearing or a hearing on an initial determination regarding whether the patient is unable to participate in medical or mental health treatment decisions, the court may dispense with notice of the hearing on those interested parties who could not be contacted after diligent effort by the petitioner.

(3) Time of Service. Notice of hearing must be served at least 2 days before the time of a hearing on an initial determination regarding whether the patient is unable to participate in medical or mental health treatment decisions. Notice of an expedited hearing must be served at such time as directed by the court. Notice of other hearings must be served at such time as directed by MCR 5.108.

(D) Hearings.

(1) Time. Hearings on a petition for an initial determination regarding whether a patient is unable to participate in a medical or mental health treatment decision must be held within 7 days of the filing of the petition. The court may order an expedited hearing on any petition concerning a durable power of attorney for health care or mental health treatment decisions on a showing of good cause to expedite the proceedings. A showing of good cause to expedite proceedings may be made ex parte.

(2) Trial. Disputes concerning durable powers of attorney for health care or mental health treatment decisions are tried by the court without a jury.

(3) Proof. The petitioner has the burden of proof by a preponderance of evidence on all contested issues except that the standard is by clear and convincing evidence on an issue whether a patient has authorized the patient advocate under a durable power of attorney for health care to decide to withhold or withdraw treatment, which decision could or would result in the

patient's death, or authorized the patient advocate under a durable power of attorney for mental health treatment to seek the forced administration of medication or hospitalization.

(4) Privilege, Waiver. The physician-patient privilege must not be asserted.

(E) Temporary Relief. On a sufficient showing of need, the court may issue a temporary restraining order pursuant to MCR 3.310 pending a hearing on any petition concerning a durable power of attorney for health care or mental health treatment.

MCR 5.784 retained 5.31.05

## Subchapter 5.800 Appeals

### Rule 5.801 Appeals to Other Courts

(A) Right to Appeal. An interested person aggrieved by an order of the probate court may appeal as provided by this rule.

(B) Orders Appealable to Court of Appeals. Orders appealable of right to the Court of Appeals are defined as and limited to the following:

(1) a final order affecting the rights or interests of an interested person in a decedent estate, the estate of a person who has disappeared or is missing, a conservatorship or other protective proceeding, the estate of an individual with developmental disabilities, or an inter vivos or testamentary trust. These are defined as and limited to orders resolving the following matters:

- (a) appointing or removing a personal representative, conservator, or trustee, or denying such an appointment or removal;
- (b) admitting or denying to probate of a will, codicil, or other testamentary instrument;
- (c) interpreting or construing a testamentary instrument or inter vivos trust;
- (d) approving a settlement of a contest relating to an inter vivos trust or a testamentary instrument;
- (e) discharging a surety on a bond from further liability;
- (f) allowing or rejecting claims;
- (g) assigning, selling, leasing, or encumbering any of the assets of an estate or trust;
- (h) authorizing or denying the continuation of a business;
- (i) determining special allowances in a decedent's estate such as a homestead allowance, an exempt property allowance, a family allowance, or right to remain in a dwelling;
- (j) authorizing or denying rights of election;
- (k) determining heirs or devisees;
- (l) determining title or claims to property;
- (m) authorizing or denying partition of property;
- (n) authorizing or denying specific performance;
- (o) ascertaining survivorship of parties;
- (p) granting or denying a petition to bar a mentally incompetent or minor wife from dower in the property of her living husband;
- (q) granting or denying a petition to determine *cy pres*;

- (r) directing or denying repayment of distributions;
- (s) determining or denying a constructive trust;
- (t) determining or denying an oral contract relating to a will;
- (u) allowing or disallowing an account, fees, or administration expenses;
- (v) surcharging or refusing to surcharge a fiduciary;
- (w) authorizing federal estate tax apportionment;
- (x) distributing proceeds recovered for wrongful death under MCL 600.2922;
- (y) determining or directing payment of inheritance taxes;
- (z) assigning residue;
- (aa) granting or denying a petition for instructions;
- (bb) authorizing disclaimers.

(2) other appeals as may be hereafter provided by statute.

(C) Final Orders Appealable to Circuit Court. All final orders not enumerated in subrule (B) are appealable of right to the circuit court. These include, but are not limited to:

- (1) a final order affecting the rights and interests of an adult or a minor in a guardianship proceeding;
- (2) a final order affecting the rights or interests of a person under the Mental Health Code, except for a final order affecting the rights or interests of a person in the estate of an individual with developmental disabilities.

(D) Interlocutory Orders. An interlocutory order, such as an order regarding discovery; ruling on evidence; appointing a guardian ad litem; or suspending a fiduciary for failure to give a new bond, to file an inventory, or to render an account, may be appealed only to the circuit court and only by leave of that court. The circuit court shall pay particular attention to an application for leave to appeal an interlocutory order if the probate court has certified that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.

(E) Transfer of Appeals From Court of Appeals to Circuit Court. If an appeal of right within the jurisdiction of the circuit court is filed in the Court of Appeals, the Court of Appeals may transfer the appeal to the circuit court, which shall hear the appeal as if it had been filed in the circuit court.

(F) Appeals to Court of Appeals on Certification by Probate Court. Instead of appealing to the circuit court, a party may appeal directly to the Court of Appeals if the probate court certifies that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an appeal directly to the Court of Appeals may materially advance the ultimate termination of the litigation. An appeal to the Court of Appeals under this subrule is by leave only

under the provisions of MCR 7.205. In lieu of granting leave to appeal, the Court of Appeals may remand the appeal to the circuit court for consideration as on leave granted.

### **Rule 5.802 Appellate Procedure; Stays Pending Appeal**

(A) Procedure. Except as modified by this subchapter, chapter 7 of these rules governs appeals from the probate court.

(B) Record.

(1) An appeal from the probate court is on the papers filed and a written transcript of the proceedings in the probate court or on a record settled and agreed to by the parties and approved by the court. The appeal is not de novo.

(2) The probate register may transmit certified copies of the necessary documents and papers in the file if the original papers are needed for further proceedings in the probate court. The parties shall not be required to pay for the copies as costs or otherwise.

(C) Stays Pending Appeals. An order removing a fiduciary; appointing a special personal representative or a special fiduciary; granting a new trial or rehearing; granting an allowance to the spouse or children of a decedent; granting permission to sue on a fiduciary's bond; or suspending a fiduciary and appointing a special fiduciary, is not stayed pending appeal unless ordered by the court on motion for good cause.

## Subchapter 5.900 Proceedings Involving Juveniles

### **Rule 5.900 Note:**

Subchapter 5.900 was deleted effective May 1, 2003, and many of its provisions relocated to subchapter 3.900.